

1970

## c 439 Small Claims Courts Act

Ontario

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## CHAPTER 439

## The Small Claims Courts Act

**1.—(1)** In this Act,Interpre-  
tation

- (a) “action” includes a proceeding, suit, matter and cause;
- (b) “county” includes a provisional county and a provisional judicial district;
- (c) “county court” includes a district court;
- (d) “debt or money demand summons” means a summons instituting an action for the recovery of a debt or money demand;
- (e) “defendant” includes a primary debtor;
- (f) “division” means the territory in and for which a small claims court is prescribed;
- (g) “Inspector” means the Inspector of Legal Offices;
- (h) “judge” means,
  - (i) a small claims court judge appointed under this Act, or
  - (ii) the judge or a junior judge of a county court;
- (i) “judgment creditor” includes a creditor who has obtained judgment against a garnishee;
- (j) “judgment debtor” includes a garnishee against whom judgment has been recovered;
- (k) “plaintiff” includes a primary creditor;
- (l) “prescribed form” means the form prescribed in the rules;
- (m) “rules” means the rules and regulations made under this Act. R.S.O. 1960, c. 110, s. 1 (1); 1961-62, c. 35, s. 1, *amended*.

(2) Where in this Act any power or authority is conferred or any duty is imposed upon the judge of a county court, it shall be exercised or performed by him and not by a junior judge. R.S.O. 1960, c. 110, s. 1 (2).

Exclusive  
powers of  
county judge

**2.—(1)** Part I, except where otherwise therein provided, applies to every county and provisional judicial district.

Territorial  
application  
of Part I;

(2) Part II applies only to provisional judicial districts. Part II R.S.O. 1960, c. 110, s. 2.

## PART I

## APPLICABLE TO COUNTIES AND DISTRICTS

## COURTS

Small  
claims  
courts

**3.** Subject to this Act and the rules, the small claims courts existing at the time this Act takes effect are continued. 1970, c. 120, s. 2, *part, amended*.

Name

**4.** The court in each division shall be called "The First (*or as the case may be*) Small Claims Court of the County of . . . . .". 1970, c. 120, s. 2, *part*.

Each court  
to have  
a seal

**5.** Every small claims court shall have a seal, with which all process shall be sealed or stamped, and that shall be paid for out of the Consolidated Revenue Fund. R.S.O. 1960, c. 110, s. 5.

To be courts  
of record

**6.** Every small claims court is a court of record. R.S.O. 1960, c. 110, s. 6.

Courts in  
cities

**7.** In a city in which two small claims courts are prescribed, all or any of the sittings of both such courts may be held in either of such divisions, and the clerks of both courts may, with the approval of the Lieutenant Governor in Council, keep their offices in the same division. R.S.O. 1960, c. 110, s. 7.

Use of  
court house

**8.** The sittings of a small claims court in a county town may be held in the court house. R.S.O. 1960, c. 110, s. 9.

Change in  
number or  
limits of  
court

**9.** Actions and judgments in a small claims court, the number or limits of which are changed, continue to be actions and judgments therein, but the judge may transfer any such action or judgment to any other small claims court, and, when so transferred, it is an action or judgment of such other court. R.S.O. 1960, c. 110, s. 10.

Clerks of  
the peace  
to record  
time and  
place for  
holding  
courts

**10.** The clerk of the peace shall record in a book to be kept by him the divisions as prescribed from time to time, and the times and places of holding the small claims courts, and the alterations made therein, and he shall transmit to the Inspector a copy of the record. R.S.O. 1960, c. 110, s. 11.

## JUDGES

Appoint-  
ment of  
judges

**11.** The Lieutenant Governor in Council may appoint small claims court judges.

Who to  
preside

**12.** Every small claims court shall be presided over by a judge. R.S.O. 1960, c. 110, s. 12.

**13.**—(1) The judge may appoint a barrister to act as his deputy, and the barrister so appointed has all the powers and privileges vested in and is subject to all the duties imposed by law upon the judge. R.S.O. 1960, c. 110, s. 13 (1). In case of illness or absence of judge

(2) The judge shall forthwith send to the Inspector notice of the appointment, specifying the name and residence of the barrister so appointed and the reason for his appointment. R.S.O. 1960, c. 110, s. 13 (2); 1968, c. 31, s. 2. Inspector to be notified

(3) No such appointment shall be continued for more than two months, and, in case the Lieutenant Governor in Council disapproves of the appointment, he may annul it. R.S.O. 1960, c. 110, s. 13 (3). Duration

**14.** If the judge does not open court on the day appointed for that purpose, the clerk shall, after 4 o'clock in the afternoon, adjourn the court to an hour on the following day, to be named by him, and so from day to day, adjourning over any Sunday or holiday, until the judge arrives to open court, or until other directions are received from him. R.S.O. 1960, c. 110, s. 14. Adjournment of court if judge does not arrive

**15.**—(1) It is the duty of the judge to see that the officers of his courts perform their duties and to examine into complaints against them. Judge to supervise

(2) The judge may suspend a clerk or bailiff for any cause and, in the case of suspension, shall forthwith report it and the reason therefor to the Inspector, and, if a vacancy occurs in the office of clerk or bailiff, the judge shall forthwith notify the Inspector. R.S.O. 1960, c. 110, s. 15. Suspensions

**16.** An action by or against a judge may be brought in any small claims court of a county adjoining that in which he resides. R.S.O. 1960, c. 110, s. 16. Action by or against judge

**17.** The judge may at any time, and on such terms as to costs and otherwise as to him seem just, amend any defect or error in any proceeding, and all such amendments may be made as are necessary for the advancement of justice, determining the real question raised by or depending on the proceedings and best calculated to secure the giving of judgment according to the very right and justice of the case. R.S.O. 1960, c. 110, s. 17. Power to amend proceedings

#### CLERKS AND BAILIFFS

**18.** There shall be a clerk and one or more bailiffs for every small claims court, who shall be appointed by the Lieutenant Governor and hold office during pleasure. R.S.O. 1960, c. 110, s. 18. Every court to have clerk and bailiff



Holiday  
defined  
R.S.O. 1970,  
c. 225

**19.**—(1) In this section, “holiday” means,

- (a) a holiday as defined in *The Interpretation Act*;
- (b) Saturday;
- (c) the day proclaimed as Civic Holiday in the municipality in which the small claims court office is located;
- (d) the 26th day of December in a year in which Christmas Day falls on a day other than Saturday, or the 27th day of December in a year in which Christmas Day falls on a Saturday.

Office  
hours

(2) Except on holidays when they shall be closed, every small claims court office shall be kept open from 9.30 o'clock in the forenoon until 4.30 o'clock in the afternoon. 1970, c. 120, s. 5.

Clerk to  
issue  
summonses,  
etc.

**20.**—(1) The clerk shall issue all summonses and shall make copies thereof with the notices thereon, according to the prescribed form, and, except as otherwise provided by this Act, shall deliver the same to the bailiff for service.

Clerk to  
keep a  
record of  
process

(2) The clerk shall cause a note of all summonses, notices, orders, judgments, warrants, executions and returns thereto to be entered in a book to be kept in his office, and shall sign his name on every page of the book, and the signed entries, or a copy thereof certified as a true copy by the clerk, are sufficient evidence of such entries and of the proceedings referred to therein without further proof. R.S.O. 1960, c. 110, s. 20.

Books to  
be kept  
by clerks

**21.** A procedure book and a foreign procedure book shall be kept by the clerk. R.S.O. 1960, c. 110, s. 21 (1).

Forwarding  
summonses  
for service  
in other  
divisions

**22.** The clerk, when required, shall forward the summons and copies for service to the clerk of any other court who shall receive and deliver them to the bailiff for service, and when returned shall send the summons to the clerk from whom it was received, and shall enter the proceedings in the foreign procedure book. R.S.O. 1960, c. 110, s. 22.

Clerk to  
prepare  
affidavits of  
service, etc.

**23.** The clerk shall prepare an affidavit of service of every summons issued out of his court, or sent to him for service, stating how it was served, the day of service and the distance the bailiff necessarily travelled to effect service, and the affidavit shall be annexed to or endorsed on the summons and shall be sworn to by the bailiff, but the judge may require the bailiff to be sworn in his presence and to answer such questions as are put to him touching any service or mileage. R.S.O. 1960, c. 110, s. 23.

**24.** The clerk shall issue all warrants and executions, and shall tax costs, subject to revision by the judge, and shall keep an account of all fines payable or paid into court, and of all suitors' money paid into and out of court, and shall enter an account of all such fines and money in a book to be kept by him for that purpose, which shall be open to all persons desirous of searching it, and it shall at all times be accessible to the judge and the Inspector. R.S.O. 1960, c. 110, s. 24.

Clerks to issue executions, tax costs and keep account of fines, etc.

**25.** The money arising from any penalty, forfeiture or fine imposed by or under this Act, not directed to be otherwise applied, shall be paid to the clerk and shall be paid by him to the clerk of the peace, to be paid over to the Treasurer of Ontario. R.S.O. 1960, c. 110, s. 25.

Fines and penalties to be paid to clerk of peace

**26.** The clerk shall, at least once in every three months or oftener if required by the clerk of the peace, deliver to him a full account in writing verified by affidavit of all fines levied, accounting for and deducting the reasonable expenses of levying them and any allowance that the judge may make out of such fines in pursuance of the power hereinafter given. R.S.O. 1960, c. 110, s. 26.

Clerks to deliver to clerk of peace a verified account of fines,

**27.** The clerk, when required by the judge, shall furnish him with a full account in writing, verified by affidavit, of the money paid into or out of the court under orders, judgments or process of the court, and of the balance in court belonging to suitors or others. R.S.O. 1960, c. 110, s. 27.

and furnish judge with a verified account of moneys paid in and out of court

**28.** The clerk shall promptly remit all moneys received by him in payment of a judgment to the person entitled thereto and shall in no case retain any such moneys for a period of more than three months. R.S.O. 1960, c. 110, s. 28.

Clerk to remit moneys

**29.—(1)** The clerk shall annually, in the month of January, make out a correct statement of all sums of money belonging to suitors or others that have been paid into court and have remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the persons for whom or on whose account such sums were so paid.

Clerk annually to make list of suitors' money in court for six years

(2) The clerk shall keep one copy of the statement posted up in his office and another copy in some conspicuous part of the court house or the place where the court is held, and copies shall also be sent to the Treasurer of Ontario and the Inspector.

Posting and distributing list

(3) All such sums shall form part of the Consolidated Revenue Fund and shall be forthwith paid over by the clerk or officer holding them to the Treasurer of Ontario, and, except by leave of

Disposition of unclaimed moneys

the Lieutenant Governor in Council, no person is entitled to claim any such sum that has remained unclaimed for six years.

Claims of  
persons  
under  
disability

(4) The time during which the person entitled to claim any such sum was an infant, or of unsound mind, or out of Ontario, shall not be taken into account in computing the six years. R.S.O. 1960, c. 110, s. 29.

Bailiffs to  
serve  
process

**30.** The bailiff shall promptly serve and execute all summonses, orders, warrants and executions delivered to him by the clerk, and shall so soon as served or executed return them to the clerk, but, subject to section 64, he shall not be required to travel beyond the limits of his division, or be allowed to charge mileage for any distance beyond the limits of the county in which is situated the division for the court of which he is bailiff. R.S.O. 1960, c. 110, s. 30.

Fees for  
sittings

**31.**—(1) Where the gross fees earned by a clerk or bailiff are less than \$1,000 a year, there shall be paid to the clerk and bailiff, respectively, the sum of \$4 for attending each sitting of the court. 1968, c. 31, s. 4; 1970, c. 120, s. 6, *amended*.

Additional  
allowance  
for clerks

(2) Where the gross fees earned by a clerk in a year are less than \$13,333.33, there shall be paid to the clerk an additional allowance amounting to 10 per cent of such gross fees less 40 per cent of such gross fees that are in excess of \$10,000. 1970, c. 120, s. 7 (1), *part*.

Additional  
allowance  
for bailiffs

(3) Where the gross fees earned by a bailiff in a year are less than \$20,000, there shall be paid to the bailiff an additional allowance of 10 per cent of such gross fees, less 20 per cent of such gross fees that are in excess of \$10,000. 1970, c. 120, s. 7 (1), *part*.

By whom  
fees to be  
paid in first  
instance

**32.**—(1) The fees upon every proceeding shall be paid in the first instance, and before it is taken, by the party on whose behalf it is taken.

How  
enforced

(2) If the fees are not so paid, payment may, by summary order of the judge, be enforced by execution in like manner as a judgment of the court. R.S.O. 1960, c. 110, s. 32.

Bailiff's  
fees to be  
paid to  
clerk when  
execution  
issues

**33.** At the time of the issue of any process or execution the bailiff's fees thereon shall be paid to the clerk and shall be paid over to the bailiff upon the return of the execution and not before, but, if the bailiff does not become entitled to any part or becomes entitled to a part only of such fees, the whole or the surplus, as the case may be, shall be repaid by the clerk to the person from whom the fees were received. R.S.O. 1960, c. 110, s. 33.



**34.** If the bailiff neglects to return any process or execution within the time required by law, he shall for such neglect forfeit his fees thereon, and all fees so forfeited shall be held to have been received by the clerk who shall keep a special account thereof and account for and pay over the fees to the clerk of the peace, to be paid to the Treasurer of Ontario, to form part of the Consolidated Revenue Fund. R.S.O. 1960, c. 110, s. 34.

Bailiff  
to forfeit  
fees if he  
neglects  
to return  
process

**35.** A clerk or bailiff shall not, directly or indirectly, take or receive any commission, charge, fee or reward for or in connection with the collection of any debt or claim that has been or may or can be sued in the court for which he is clerk or bailiff, except such fees as are provided by a tariff of fees under this Act. R.S.O. 1960, c. 110, s. 35.

Clerk or  
bailiff not  
to accept  
extra fees

**36.** Every clerk and bailiff shall, as often as required by the Inspector, produce at the clerk's office, for examination and inspection, all books and documents required to be kept by him, and shall report to the Inspector concerning such matters as the Inspector may require. R.S.O. 1960, c. 110, s. 36.

Books, etc.,  
to be pro-  
duced for  
inspection

**37.** Every clerk and bailiff shall, on or before the 31st day of January in every year, make a return under oath to the Inspector showing the aggregate amount of fees, charges and emoluments that he became entitled to receive during the year that ended on the 31st day of December next preceding. 1965, c. 32, s. 1.

Clerks' and  
bailiffs'  
returns to  
Inspector

**38.** Every clerk, on or before the 31st day of January in each year, shall make a return, in such form and manner as the Lieutenant Governor in Council may prescribe, of the business of his office for the year that ended on the 31st day of December next preceding. R.S.O. 1960, c. 110, s. 38.

Clerk to  
make  
returns to  
Lieutenant  
Governor

**39.** Every clerk, on or before the 31st day of January in each year, shall make to the Inspector a return showing the number of judgment debtors who, during the twelve months ending the 31st day of December next preceding, were ordered to be committed under each of the heads mentioned in section 133. R.S.O. 1960, c. 110, s. 39.

Annual  
return of  
commitment  
of judgment  
debtors

**40.—(1)** Every clerk and bailiff shall furnish such security as is required by the Lieutenant Governor in Council for the due performance of the duties of his office, and, subject to the rules, the provisions of *The Public Officers Act* relating to the giving of security apply to such security.

Security  
by clerks  
and bailiffs

R.S.O. 1970,  
c. 382

**(2)** The security shall enure to the benefit of any person suffering damage by the default, breach of duty or misconduct of the clerk or bailiff. R.S.O. 1960, c. 110, s. 40.

Security  
to enure  
to benefit  
of person  
injured



Entries of clerk or bailiff evidence against surety

Interpretation of "clerk or bailiff"

**41.**—(1) In an action against a surety of a clerk or bailiff, the entries in the books kept by such clerk or bailiff are *prima facie* evidence against the surety.

(2) For the purpose of this section, "clerk or bailiff" includes a person who has ceased to be a clerk or a bailiff, as the case may be. R.S.O. 1960, c. 110, s. 41.

Clerk not to practise as barrister, etc.

**42.** A clerk shall not practise as a barrister or solicitor. R.S.O. 1960, c. 110, s. 42.

Actions by and against clerks and bailiffs  
Idem

**43.**—(1) A clerk or bailiff shall not sue or be sued in the court of which he is clerk or bailiff.

(2) A clerk or bailiff shall sue or be sued separately or jointly with another person in the court of any next adjoining division whether in the same or another county.

Commenced before appointment

(3) Nothing in this section prevents proceedings from being continued in the court in which the action was brought, if they were commenced before the appointment of such clerk or bailiff. R.S.O. 1960, c. 110, s. 43.

Bailiff and other officers not to purchase goods seized

**44.** A clerk, bailiff or other officer of the court shall not, directly or indirectly, purchase any property at a sale made by a bailiff under legal process, and every such purchase is void. R.S.O. 1960, c. 110, s. 44.

Extortion

**45.** If a clerk, bailiff or other officer of a small claims court is guilty of extortion, he is, upon proof thereof before the court, forever disqualified from holding any office of profit or emolument in a small claims court, and is also liable in damages to the party aggrieved. R.S.O. 1960, c. 110, s. 45.

Misconduct of court officers

**46.**—(1) Upon a complaint in writing that a bailiff or officer, acting under colour or pretence of process of his court, is guilty of extortion or misconduct, or does not duly pay or account for all money levied or received by him by virtue of his office, the judge may, at a sittings of the court, inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary persons, and make such order thereupon for the repayment of any money extorted, or for the due payment of any money levied or received, and for the payment of such damages and costs to the person aggrieved, as he thinks just. R.S.O. 1960, c. 110, s. 46 (1).

Enforcing order for payment by bailiff

(2) In default of payment of the money ordered to be paid by the bailiff or officer within the time mentioned in the order for the payment thereof, the judge may, by warrant under his hand and seal, cause such sum to be levied by distress and sale of the goods

of the offender, together with the reasonable charges of the distress and sale, and in default of such distress or summarily in the first instance, or where payment is not made forthwith, if so ordered, may commit the offender to a correctional institution in the county for a period not exceeding three months, unless the money and costs are sooner paid. R.S.O. 1960, c. 110, s. 46 (2), *amended*.

**47.** If a bailiff, by neglect, connivance or omission, loses the opportunity of levying an execution or taking property under an attachment, or unduly delays to levy or attach, the judge, upon complaint of the party aggrieved, and upon proof of the fact alleged, may order the bailiff to pay such damages as the party aggrieved appears to have sustained, not exceeding the sum for which the execution or attachment issued, and upon demand being made therefor, and on his refusal to satisfy the damages, payment may be enforced by such means as are provided for enforcing judgments. R.S.O. 1960, c. 110, s. 47.

Bailiff neglecting duty in relation to execution

**48.** All accounts, moneys, books, papers, documents and other things in the possession of a clerk or bailiff, by virtue of or appertaining to his office, shall, upon his death, resignation or removal, immediately become the property of the clerk of the peace, who shall hold them until the appointment of another clerk or bailiff to whom he shall deliver them when security has been furnished on behalf of such clerk or bailiff. R.S.O. 1960, c. 110, s. 48.

Resignation, removal or death of clerk

**49.** Leave of absence for a period not exceeding two months may be granted by the Inspector to a clerk or bailiff. R.S.O. 1960, c. 110, s. 49.

Leave of absence

**50.** Subject to section 51, upon the death, resignation, suspension or removal of the clerk, the clerk of the peace shall be the clerk until a successor is appointed or the suspension is removed, and the clerk of the peace shall be paid by the county for his services in taking over the office the sum of \$5 together with actual disbursements. R.S.O. 1960, c. 110, s. 50.

Clerk of peace to act as clerk when office of clerk is vacant

**51.—(1)** With the approval of the Inspector, when prevented from acting because of absence or illness or any cause other than suspension, the clerk or bailiff may appoint a deputy to act for him, and the clerk or bailiff, as the case may be, is jointly and severally responsible for all the acts and omissions of the deputy so appointed.

Deputy during absence of clerk or bailiff

**(2)** With the approval of the Inspector, where there is no clerk or bailiff or the clerk or bailiff is under suspension, the judge may appoint a clerk or bailiff, as the case may be, *pro tempore*.

Appointment of clerk, bailiff *pro tempore*

Powers,  
privileges,  
duties

(3) Where an appointment is made under subsection 1 or 2, the person so appointed has, during the period of his appointment, all the powers and privileges and is subject to the duties of the clerk or bailiff, as the case may be.

Clerk acting  
as bailiff

(4) Where there is no bailiff or the bailiff is for any reason unable to act, the clerk may act in his place. R.S.O. 1960, c. 110, s. 51.

Continua-  
tion of  
proceedings

**52.**—(1) In the event of the death, resignation, suspension or removal of a bailiff, after action taken by him under an execution or attachment, the proceedings may be continued by his successor.

Securities  
given to  
the bailiff

(2) The benefit of all securities given to the bailiff enures to his successor in office. R.S.O. 1960, c. 110, s. 52.

#### JURISDICTION AS TO CAUSES OF ACTION AND QUANTUM

Cases in  
which court  
has no  
jurisdiction

**53.** A small claims court does not have jurisdiction in,

- (a) an action for the recovery of land, or an action in which the right or title to a corporeal or incorporeal hereditament, or any toll, custom, or franchise, comes in question;
- (b) an action in which the validity of a devise, bequest or limitation under a will or settlement is disputed;
- (c) an action for malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage;
- (d) an action against a justice of the peace for anything done by him in the execution of his office, if he objects thereto;
- (e) an action upon a judgment or order of the Supreme Court or a county court where execution may issue upon or in respect thereof. R.S.O. 1960, c. 110, s. 53.

Cases in  
which court  
has juris-  
diction

**54.** Except as otherwise provided in this Act, a small claims court has jurisdiction in,

- (a) any action where the amount claimed does not exceed \$400 exclusive of interest;
- (b) any action of replevin where the value of property distrained, taken or detained does not exceed \$400; and
- (c) any action or matter authorized by or under any Act to be heard in the small claims court. 1965, c. 32, s. 2 (1).



**55.** The judge shall hear and determine in a summary way all questions of law and fact and may make such order or judgment as appears to him just and agreeable to equity and good conscience, which shall be final and conclusive between the parties, except as herein otherwise provided. R.S.O. 1960, c. 110, s. 55; 1968-69, c. 30, s. 1.

Summary  
hearings

**56.** Upon a contract for the payment of a sum certain in labour or in any kind of goods or commodities or in any other manner than in money, the judge may give judgment for the amount in money as if the contract had been so expressed, if the goods and commodities have not been delivered or the labour or other thing performed in accordance with the contract. R.S.O. 1960, c. 110, s. 56.

Judge may  
order  
payment  
in money,  
although  
contract  
not for  
payment  
in money

**57.**—(1) A small claims court in actions otherwise within its jurisdiction has power to grant relief, redress or remedy, or combination of remedies, either absolute or conditional, including the power to relieve against penalties and forfeitures, in as full and ample a manner as might be done in the like case by the Supreme Court.

Powers of  
court

(2) Nothing in this section confers jurisdiction to grant an injunction. R.S.O. 1960, c. 110, s. 57.

No  
injunctions

**58.** A minor may sue for any sum not exceeding \$100 due to him for wages, or for work or services, as if he were of full age. R.S.O. 1960, c. 110, s. 58.

Minors may  
sue for  
wages

**59.** A cause of action shall not be divided into two or more actions for the purpose of bringing it within the jurisdiction of a small claims court. R.S.O. 1960, c. 110, s. 59.

Causes of  
action not  
to be  
divided

**60.** A judgment in an action brought for the balance of an account, or for a part of a claim, where the residue is abandoned to bring the claim within the jurisdiction of a small claims court, is a full discharge of all demands in respect of the account for the balance of which such action was brought or for the whole claim, as the case may be. R.S.O. 1960, c. 110, s. 60.

Judgment  
to be full  
discharge

**61.**—(1) Where it appears at any stage of an action otherwise of the proper competence of a small claims court that the court has not cognizance thereof on account of the title to land or a corporeal or incorporeal hereditament, or a toll, custom or franchise being in question, or the validity of a devise, bequest or limitation under a will or settlement being disputed, or the amount involved being in excess of the jurisdiction of the court, the action shall not on that account be dismissed, but a judge of the Supreme Court, or the judge of the court in which the action is

Transfer of  
actions to  
Supreme  
Court

pending, may order the action to be transferred to the Supreme Court or to a county court where the county court would have jurisdiction, upon such terms as to the payment of costs or otherwise as he thinks fit, and thereafter the action shall proceed in the Supreme Court or the county court as if originally commenced therein and as if the defendant had entered an appearance, but the judge may give such directions as to procedure as he considers proper.

Appeal  
from  
order

(2) Where the order is made by a judge of a small claims court, an appeal lies therefrom to a judge of the Supreme Court in chambers who may rescind the order or vary the terms thereof. R.S.O. 1960, c. 110, s. 61.

Action may  
be removed  
into  
Supreme  
Court

**62.** If it appears to a judge of the Supreme Court that an action is a fit one to be tried in the Supreme Court, he may order that it be transferred to the Supreme Court upon such terms as to payment of costs or otherwise as he thinks fit. R.S.O. 1960, c. 110, s. 62.

Counter-  
claim  
involving  
matters  
beyond  
jurisdiction

**63.**—(1) Where a counterclaim is disputed and involves matters beyond the jurisdiction of the small claims court, the judge may try the claim and may, if he sees fit, stay the issue of execution upon the judgment until the counterclaim has been disposed of, upon such terms as to security and otherwise as he sees fit to impose.

Set-off  
of counter-  
claim when  
admitted

(2) If the counterclaim or any part thereof is admitted, the judge may direct the amount admitted to be set off *pro tanto* without prejudice to any proceedings to recover the balance. R.S.O. 1960, c. 110, s. 63.

#### TERRITORIAL JURISDICTION AND PLACE OF TRIAL

In what  
court  
actions  
to be  
entered  
and tried

**64.**—(1) An action in a small claims court shall be entered and tried,

- (a) in the court for the division in which the cause of action arose; or
- (b) in the court for the division in which the defendant or any one of several defendants resides or carries on business; or
- (c) in the court whose place of sitting is nearest to the residence of the defendant or any one of several defendants.

Woodsman's  
wages

(2) In addition to the courts mentioned in subsection 1, an action of a woodsman for wages may be entered and tried in the court for the division in which his contract for hire was made,

regardless of any stipulation in the contract or elsewhere to the contrary, and, in this subsection, "woodsman" means a person performing labour or services in connection with logs or timber, and includes a cook, blacksmith and every type of artisan usually employed in connection with logging or timbering operations.

(3) In any case under clause *c* of subsection 1 or subsection 2, a summons may be served by a bailiff of the court out of which it issues, and upon judgment being recovered execution against the goods and chattels of the debtor and all other process and proceedings to enforce payment of the judgment may be issued to the bailiff of such court and be executed and enforced by him in the county in which the debtor resides as well as in the county in which the judgment was recovered. R.S.O. 1960, c. 110, s. 64.

Service of process in certain cases

**65.** If a person desires to bring an action in the court of a division other than as in section 64 mentioned, the judge may by order authorize an action to be entered and tried in the court of any division in his county adjacent to the division in which the defendant or one of the defendants resides, whether such defendant resides in the county of the judge granting the order or in an adjoining county. R.S.O. 1960, c. 110, s. 65.

When actions may be brought in other than the regular divisions

**66.** No proviso, condition, stipulation, agreement or statement that provides for the place of trial of an action, matter or proceeding is of any force or effect where the defendant, within the time limited for disputing the plaintiff's claim or within such further time as the judge allows, files with the clerk of the court in which the action was commenced a notice disputing the jurisdiction of the court and an affidavit of the defendant or his agent stating that in his belief there is a good defence to the action on the merits, the division wherein the cause of action arose, or partly arose, and the division where the defendant resides. R.S.O. 1960, c. 110, s. 66.

Effect of agreement as to place of trial

**67.—(1)** Where a claim is within the proper competence of a small claims court, the action may be brought notwithstanding that the residence of the defendant is, at the time of bringing the action, out of Ontario, and the action may be brought in the court of the division in which the cause of action arose or partly arose, but the court may refuse to allow the action to proceed if it appears that the action is one that ought to be tried elsewhere.

Actions when defendant resides out of Ontario

(2) The service of the summons may be made by a bailiff of the court out of which it issued or by any person who is, either before or after the service, approved by the judge or by the clerk, but the summons shall be served at least fifteen days before the return day thereof.

Service of summons on non-residents



Allowance  
for service  
out of  
Ontario

(3) Where service of the summons has been effected out of Ontario, the judge may allow, as costs in the action, a sum towards the expenses incurred in effecting service, not exceeding in the whole \$5. R.S.O. 1960, c. 110, s. 67.

Where  
defendant a  
corporation  
with head  
office out  
of Ontario

**68.** Where the defendant is a corporation not having its head office in Ontario and the cause of action arose partly in one division and partly in another, the plaintiff may bring his action in either division. R.S.O. 1960, c. 110, s. 68.

Place of  
trial where  
amount sued  
for exceeds  
\$100

**69.**—(1) Where the debt or money payable exceeds \$100 and is made payable by the contract of the parties at a place named therein, the action may be brought thereon in the court of the division in which the place of payment is situate, subject to the action being transferred to the court of any division in which but for this section it might have been brought.

Changing  
place of  
trial in  
such cases

(2) The judge of the small claims court in which the action is brought may, upon application of the defendant made within the time limited for disputing the plaintiff's claim, make an order transferring the action accordingly.

Affidavit in  
support of  
application

(3) The application shall be supported by an affidavit of the applicant or his agent stating that the applicant intends to defend the action, that there is a good defence upon the merits, that the cause of action did not wholly arise in the division in which the action is brought, that the witnesses for the defence, or some of them, reside in the division in which the defendants, or one of them, resided or carried on business at the time the action was brought, and that the application is not made for the purpose of delay, and the dates of the next two sittings of the court to which it is sought to have the action transferred shall also be shown.

Order and  
papers to  
be trans-  
mitted to  
clerk

(4) The order shall direct at what sittings of the court the action is to be tried, subject to all rights of postponement as in other cases, and shall be attached by the clerk to the summons and other proceedings in the action, and he shall forthwith transmit them to the clerk of the court to which the action is transferred, and enter a minute thereof in his procedure book.

To be  
entered in  
procedure  
book

(5) Upon receipt of the order and other papers by the clerk of such last-mentioned court, he shall enter the action and proceedings in his procedure book.

Style

(6) All the papers and proceedings in the action thereafter shall be entitled and carried on as though the action had originally been entered in the last-mentioned court.

Service  
of order

(7) The defendant shall forthwith serve a copy of the order upon the plaintiff or his agent. R.S.O. 1960, c. 110, s. 69.

**70.**—(1) If it appears that an action should have been entered in some other court of the same or some other county, it shall not fail for want of jurisdiction, but, on such terms as the judge orders, all the papers and proceedings in the action may be transferred to any court having jurisdiction in the premises, and shall become proceedings thereof as if the action had been entered therein, and shall be continued as if it had originally been entered in the last-mentioned court.

When action entered in wrong court

(2) The clerk of the court to which the proceedings have been transferred shall place the action on the list for trial at the next sittings of his court that commence six clear days or more after he receives the papers, and he shall forthwith after receiving the papers notify the parties or their agents by registered mail of the date, hour and place of the sittings, and the clerk issuing the summons shall certify in detail to the court to which the action is transferred all the costs incurred up to the date of the transfer. R.S.O. 1960, c. 110, s. 70.

Clerk to place on list and notify parties

#### PROCEDURE BEFORE TRIAL

**71.**—(1) The plaintiff shall enter his claim with the clerk and shall at the time of the entry leave with the clerk a copy of the claim for each defendant.

Entry of claim

(2) The claim shall set out the particulars thereof with reasonable certainty and detail.

Particulars

(3) Each claim shall be numbered by the clerk according to the order in which it is entered, and a summons shall be issued by the clerk, bearing the number of the claim on the margin thereof. R.S.O. 1960, c. 110, s. 71.

Summons

**72.** In an action on a promissory note, bill of exchange or cheque, the note, bill or cheque shall be filed with the clerk before judgment, unless otherwise ordered or unless it be shown that the note, bill or cheque is lost or that it cannot for some other reason be produced. R.S.O. 1960, c. 110, s. 72.

Promissory note, etc. to be filed

**73.** The clerk shall annex the plaintiff's claim to the summons and shall deliver copies of the summons and claim to the proper person to serve it. R.S.O. 1960, c. 110, s. 73.

What to accompany summons

**74.** Where the amount of the claim is \$60 or more, the service shall be personal and, where the amount is less than \$60, the service shall be on the defendant, his wife or servant, or on a grown-up person in the defendant's usual place of residence or business. R.S.O. 1960, c. 110, s. 74.

Method of service of claim

**75.** The judge may make an order for substitutional service or for service by advertisement or otherwise. R.S.O. 1960, c. 110, s. 75.

Substitutional service

Service on  
corporations

**76.**—(1) Every summons or process, whether before or after trial, against a corporation, firm or individual whose chief place of business is not in the division in which the summons or process is issued, and all subsequent papers and proceedings in the action, may be served on the agent of the corporation, firm or individual whose office or place of business as such agent is either in the division from the court of which the summons or process issued, or is nearest thereto.

Interpre-  
tation

(2) For the purpose of this section, “agent” includes,

- (a) in the case of a railway company, a stationmaster having charge of a station of the company;
- (b) in the case of a telegraph company, a person having charge of a telegraph office of the company;
- (c) in the case of an express company, a person having charge of an express office of the company;
- (d) in the case of any other corporation, firm or individual, a manager or other principal officer in charge of the office or place of business. R.S.O. 1960, c. 110, s. 76.

Notice of  
dispute

**77.** Where a party to an action intends to dispute the claim made against him, he shall leave with the clerk within ten days of the service upon him of the summons or other process constituting a notice of the claim a notice of dispute setting out his reasons for disputing the claim together with sufficient copies thereof, and the clerk shall forthwith send a copy thereof to each of the plaintiffs or other parties to the action. R.S.O. 1960, c. 110, s. 77.

Dispute as  
to territorial  
jurisdiction

**78.** Subject to subsection 5 of section 88, where a party to an action intends to contest the territorial jurisdiction of the court, he shall include in his notice of dispute a statement that he disputes the jurisdiction of the court, and in default of such notice the jurisdiction shall be considered as established and determined and all proceedings may thereafter be taken as fully and effectually as if the action had been properly entered or taken in such court. R.S.O. 1960, c. 110, s. 78.

Leave to  
dispute  
claim before  
judgment

**79.** At any time before judgment is entered, although the time for giving the notice disputing the plaintiff's claim has expired, the judge, on sufficient grounds shown and on such terms as to him seem just, may give leave to the defendant to dispute the plaintiff's claim, in which case the notice disputing the claim shall immediately be left with the clerk and also delivered to the plaintiff or sent to him by registered mail. R.S.O. 1960, c. 110, s. 79.

Withdrawal  
of defence

**80.** A defendant who has filed a notice disputing the claim may, by notice to the clerk at least six days before the sittings at



which the action may be tried, consent that judgment be entered against him for any amount, and the clerk shall immediately notify the plaintiff thereof by registered mail, and thereupon the plaintiff is entitled to have judgment entered by the clerk as by default for such amount and the costs necessarily incurred. R.S.O. 1960, c. 110, s. 80.

**81.**—(1) Where the defendant desires to avail himself of the laws of set-off, or of *The Limitations Act*, or of a defence under any other statute, he shall give notice thereof to the plaintiff.

Notice of  
set-off  
or other  
statutory  
defence  
R.S.O. 1970,  
c. 246.

(2) Except by leave of the judge, no evidence of set-off shall be given by the defendant except such as is contained in the particulars delivered.

Evidence  
of set-off

(3) If the set-off proved exceeds the amount found to be due to the plaintiff, judgment shall be entered for the defendant for the excess, if the excess is an amount within the jurisdiction of the court, but, if the excess is an amount beyond the jurisdiction of the court, the judge may order that an amount of the set-off equal to the amount found to be due to the plaintiff be satisfied by the claim, but the adjudication is not a bar to the recovery by the defendant in a subsequent action for the residue of the set-off. R.S.O. 1960, c. 110, s. 81.

Where  
set-off  
exceeds  
amount  
due to  
plaintiff

**82.**—(1) If the defendant desires to plead a tender before action of a sum of money in full satisfaction of the plaintiff's claim, he may do so on filing his notice of dispute and at the same time paying into court the amount mentioned in the notice, and notice of the dispute and payment shall be forthwith sent by the clerk to the plaintiff by registered mail or delivered at his usual place of residence or business.

Plea of  
tender with  
payment of  
money  
into court

(2) The plaintiff shall be deemed to have accepted the money in full satisfaction of his claim, and all proceedings in the action shall be stayed unless within five days after the receipt of notice of the payment he signifies in writing to the clerk his intention to proceed for his claim notwithstanding such defence, in which case the action shall proceed.

Notice by  
plaintiff

(3) If the plaintiff does not give the notice mentioned in subsection 2, the money shall be paid to him less \$1 to be paid over to the defendant for his trouble.

If  
plaintiff  
does not  
give notice

(4) The judge may allow the plaintiff to give the notice to the clerk after the expiration of the five days on such terms as to him seem just.

Giving of  
notice  
after time  
limited

(5) If after tender and payment into court the plaintiff proceeds with the action and does not recover more than the sum paid into court, he shall pay the defendant his costs, charges and expenses, and the amount thereof may be paid to the defendant

Rule as to  
costs where  
plaintiff  
proceeds  
for balance

out of the money so paid in, or may be recovered from the plaintiff in the same manner as money payable under a judgment, but, if the plaintiff recovers more than the sum paid into court, the full amount paid into court shall be applied towards the satisfaction of his claim, and judgment may be given against the defendant for the residue and costs of the action. R.S.O. 1960, c. 110, s. 82.

Defendant  
may pay  
money into  
court

**83.**—(1) The defendant may, within the time limited for filing his notice of dispute, pay into court a sum in full satisfaction of the plaintiff's claim, together with the plaintiff's costs up to the time of such payment.

Clerk to  
give notice  
of payment  
to plaintiff

(2) The clerk shall forthwith deliver or send notice of such payment by registered mail to the plaintiff, and the sum so paid shall be paid to the plaintiff, and he shall be deemed to have accepted it in full satisfaction of his claim, and all proceedings in the action shall be stayed, unless within five days after the receipt of the notice the plaintiff gives notice to the clerk of his intention to proceed for the remainder of his claim, in which case the action shall proceed.

Notice may  
be given  
after  
five days

(3) The judge may allow the plaintiff to give the notice to the clerk after the expiration of the five days on such terms as to him seem just.

Plaintiff  
to pay  
defendant's  
costs if no  
further sum  
recovered

(4) If the plaintiff recovers no more than the sum paid into court, he shall pay the defendant all costs, charges and expenses incurred by him in the action after such payment, to be taxed and recovered by the same means as any other sum ordered by the court to be paid. R.S.O. 1960, c. 110, s. 83.

Clerks and  
bailiffs  
may take  
confessions

**84.**—(1) A clerk or bailiff may take a confession or acknowledgment of debt from a defendant in the prescribed form, which shall be witnessed by the clerk or bailiff at the time of the taking thereof, and, upon the production of the confession or acknowledgment to the judge and proof thereof by the oath of the clerk or bailiff, the judge may order that judgment be entered thereon.

Oath of  
clerk or  
bailiff

(2) The oath shall state that the party making it has not received, and that he will not receive, anything from the plaintiff or defendant or any other person except his lawful fees for taking the confession or acknowledgment and that he has no interest in the demand sought to be recovered.

Judgment  
on consent

(3) Either party may apply to a judge for judgment to be signed on consent. R.S.O. 1960, c. 110, s. 84.

Striking  
out and  
adding  
parties

**85.**—(1) The judge at any stage of the proceedings upon such terms as appear to him to be just may order that the name of the plaintiff, defendant, or garnishee improperly joined be struck out and that a person who ought to have been joined or whose presence is necessary in order to enable him effectually and

completely to adjudicate upon the questions involved in the action be added as plaintiff, defendant or garnishee.

(2) Where an action has been commenced in the name of the wrong person as plaintiff or where it is doubtful whether it has been commenced in the name of the right plaintiff, the judge, if satisfied that it has been so commenced through a *bona fide* mistake and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff upon such terms as he considers just.

Substituting  
or adding  
plaintiff

(3) No person shall be added or substituted as a plaintiff or as a next friend unless his consent in writing thereto is filed.

Consent of  
party added  
required

(4) A person who is added as a defendant or garnishee shall be served with a copy of the summons, the original summons being first amended, and the proceedings against him shall be deemed to have commenced from the date of the order making him a party, but, if the application to add a person as a party defendant or garnishee is made at the trial, the judge may make the order in a summary manner upon such terms as to him seem just, and may dispense with the service of a copy of the summons if such person or his agent consents thereto. R.S.O. 1960, c. 110, s. 85.

Service on  
parties  
added

**86.**—(1) Where a defendant claims to be entitled to contribution or indemnity from or any other relief over against a person not a party to the action or against another defendant, hereinafter called a third party, he may, within the time limited for entering his dispute, enter with the clerk his account, claim or demand in writing in detail, and, in cases of tort, particulars of his demand, against the third party stating the nature and grounds thereof, and shall at the same time deliver to the clerk a copy, and, if necessary, copies of his account, claim or demand, and shall pay to the clerk the prescribed fees.

Third  
party

(2) The clerk upon receipt of the prescribed fees shall annex the account, claim or demand and particulars, if any, to a copy of the summons to the defendant and shall deliver a copy thereof to the proper person for service upon the third party.

Summons  
to third  
party

(3) The practice and procedure as between the defendant and the third party shall be the same *mutatis mutandis* as the practice and procedure as between a plaintiff and defendant, and the judge may make such direction as appears proper for having the question between the defendant and the third party most conveniently determined and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action and may make such order or give such judgment against the third party as is required.

Procedure



Default of  
appearance

(4) Where a third party makes default in entering an appearance and if the action is tried and results in favour of the plaintiff, the judge who tries the action may, at or after the trial, direct such judgment as the nature of the case requires to be entered for the defendant giving the notice against the third party.

Delay to be  
avoided

(5) A plaintiff shall not be prejudiced or unnecessarily delayed by reason of questions between the defendant and the third party in which he is not concerned, and such directions shall be given and terms imposed as are necessary to prevent delay of the plaintiff where it can be done without injustice to the defendant and the third party. R.S.O. 1960, c. 110, s. 86.

Where no  
dispute,  
general rule

**87.** Where in an action in which the claim is not a debt or money demand the defendant does not leave a notice of dispute with the clerk within ten days of the service upon him of the summons and claim, the plaintiff shall not be required to prove liability but shall prove the amount of his claim in court. R.S.O. 1960, c. 110, s. 87.

Default  
judgment

**88.**—(1) Where in an action for the recovery of a debt or money demand the defendant does not leave a notice of dispute with the clerk within ten days of the service upon him of the summons and claim, final judgment may be entered by the clerk at any time within six months of the return of the summons, or, by the order of the judge, at any time thereafter for the amount claimed, and execution may issue thereon without prejudice to the right of the plaintiff to proceed for the remainder of his claim.

Dispute  
as to part  
of claim

(2) Where in an action for the recovery of a debt or money demand a notice of dispute is filed in respect of part only of the plaintiff's claim, subsection 1 applies to the other part of the claim.

Proof of  
service

(3) Judgment shall not be entered until the summons and claim with an affidavit of the due service of both have been filed.

Judge may  
set aside  
judgment

(4) The judge may set aside the judgment and permit the case to be tried on such terms as to him seem just.

Default  
judgment  
not to be  
entered  
until proper  
court proved

(5) Where a summons has been forwarded for service in another division under section 22 and the defendant does not leave a notice of dispute with the clerk within ten days of the service upon him of the summons and claim, the clerk shall not enter judgment until it is proved in court that the action was entered in the proper court, and, if the judge is satisfied that the action was not entered in the proper court, he shall transfer the case to the proper court on such terms as to him seem just. R.S.O. 1960, c. 110, s. 88.

Judgment  
by default  
under s. 88,  
where final  
judgment  
not entered

**89.** Where proof is made by affidavit or otherwise of the service of a debt or money demand summons and of the claim as

required by section 88 and judgment has not been entered under such section, the judge may, if the defendant does not in person or by agent appear in open court as required by the summons, give judgment against him by default without requiring proof of the plaintiff's claim. R.S.O. 1960, c. 110, s. 89.

**90.**—(1) In an action for \$25 or more commenced by a debt or money demand summons, the plaintiff, on an affidavit made by himself or any other person swearing positively to the facts and verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the action, and the reasons why immediate judgment should be granted, may concurrently with the service of the debt or money demand summons, or at any subsequent time, serve the defendant with a notice of motion and copy of the affidavit, returnable not less than four clear days after service, to show cause before the judge why the plaintiff should not be at liberty to have final judgment entered by the clerk for the amount of the debt or money demand sought to be recovered, together with interest, if any, and costs. Motion for judgment

(2) The judge thereupon, if the reasons for immediate judgment appear to be sufficient, unless the defendant or his agent by affidavit or otherwise satisfies him that the defendant has a good defence to the action on the merits, or discloses such facts as the judge considers sufficient to entitle him to defend the action, may make an order empowering the clerk to sign final judgment. Idem

(3) The defendant may show cause by offering to bring into court the amount sought to be recovered, or by affidavit which shall state whether the defence he alleges goes to the whole or to part only, and if to part only, then to what part of the claim, and the judge may, if he thinks fit, order the defendant to attend and be examined upon oath, and to produce any books and documents, or copies thereof, or extracts therefrom. How defendant may show cause

(4) If it appears that the defence applies only to a part of the claim, or that part of the claim is admitted to be due, the plaintiff is entitled to have final judgment entered forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, payment of any amount levied, or any part thereof, into court by the bailiff, the taxation of costs or otherwise, as to the judge seems just, and the defendant may be allowed to defend as to the residue of the claim. Partial defence

(5) If it appears to the judge that a defendant has a good defence, or ought to be permitted to defend, and that any other defendant has not such defence, and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff is entitled to have judgment entered against the latter, and may issue execution upon the judgment without prejudice to his right to proceed with his action against the former. Where one defendant has good defence



Terms upon  
giving leave  
to defend

(6) Leave to defend may be given unconditionally or subject to such terms as to giving security or otherwise as to the judge seem just.

Setting  
aside or  
varying  
order

(7) Within seven days after making the order and upon good grounds being shown, the judge may set aside or vary the order upon such terms as to him seem just. R.S.O. 1960, c. 110, s. 90.

#### TRIALS, WITNESSES, EVIDENCE

Judge may  
summarily  
dispose of  
action

**91.**—(1) Where a trial is to be had, the defendant shall either personally or by agent appear in the court to answer, and, on answer being made, the judge shall without further pleading or formal joinder of issue proceed in a summary way to try the action and give judgment, and, if satisfactory proof is not given entitling either party to judgment, he may nonsuit the plaintiff.

Scope of  
evidence

(2) No evidence shall be given of any cause of action except such as is contained in the claim as entered by the plaintiff, unless the judge in the special circumstances of any case otherwise directs. R.S.O. 1960, c. 110, s. 91.

Actions  
over \$200

**92.**—(1) The clerk shall place all actions in which the sum sought to be recovered exceeds \$200 at the foot of the trial list and the judge shall in such cases, unless an agreement not to appeal has been signed and filed as provided by section 107, take down the evidence in writing or cause the same to be taken down in shorthand by a shorthand writer appointed under section 13 of *The County Judges Act*, or by some other competent person. R.S.O. 1960, c. 110, s. 92 (1); 1964, c. 25, s. 1.

R.S.O. 1970,  
c. 95

Evidence  
taken down  
by judge

(2) Where the evidence is taken down by the judge in writing, it shall be left with the clerk and, in the event of an application for a new trial, it shall be forwarded to the judge by the clerk for the purposes of the application.

Shorthand  
writer's  
notes

(3) Where the evidence is taken down in shorthand, it is not necessary for the shorthand writer to extend or transcribe his notes except in the case of an appeal or an application for a new trial.

Fees and  
expenses

(4) The fees and expenses of a shorthand writer appointed under section 13 of *The County Judges Act* attending for the purpose of taking down the evidence as provided in subsection 1 shall be borne and paid in the same manner as the fees and expenses of a shorthand writer attending a sittings of a county or district court. R.S.O. 1960, c. 110, s. 92 (2-4).

Proceedings  
in case  
defendant  
does not  
appear

**93.** If the defendant does not appear at the trial or sufficiently excuse his absence, or if he neglects to answer, the judge, on proof of due service of the summons and particulars, may proceed with the trial in his absence, and, except where the plaintiff's claim is



for unliquidated damages in case of the personal service of the summons and of detailed particulars of the plaintiff's claim, the judge may, in his discretion, give judgment without further proof. R.S.O. 1960, c. 110, s. 93.

**94.** The judge may adjourn the trial of an action to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable him to enter more fully into his case or for any cause that the judge thinks reasonable, upon such conditions as to payment of costs and admission of evidence, or otherwise, as to him seem just. R.S.O. 1960, c. 110, s. 94; 1968-69, c. 30, s. 2.

Judge may  
adjourn  
hearing  
of cause

**95.—**(1) A party may obtain from the clerk of any small claims court in the county a subpoena with or without the clause for the production of books, papers and documents, requiring any witness, resident in Ontario or served with the subpoena therein, to attend at a specified court or place before the judge, or an arbitrator appointed by him under the provisions hereinafter contained, and the clerk, when requested by a party or his agent, shall furnish copies of such subpoena.

Parties may  
obtain  
subpoenas  
from clerk

(2) Any number of names may be inserted in a subpoena, and service thereof may be made by any literate person personally or by leaving a copy thereof at the usual place of abode of the witness, and proof of service and of tender or payment of witness fees and mileage may be received by the judge, either orally or by affidavit. R.S.O. 1960, c. 110, s. 95.

Service of  
subpoena

**96.—**(1) Every person served with a copy of a subpoena to or for whom at the time of service a tender or payment of his witness fees and mileage has been made, who refuses or neglects without sufficient cause to obey the subpoena, and every person in court called upon to give evidence who refuses to be sworn or to give evidence, is liable to pay such fine, not exceeding \$8, as the judge orders, and is also liable to imprisonment for a term not exceeding ten days on the order of the judge.

Penalty for  
disobeying  
subpoena or  
refusing to  
be sworn

(2) The fine shall be levied and collected with costs by the same process as a judgment recovered in the court, and the whole or any part of the fine, after deducting the costs, is applicable, in the discretion of the judge, towards indemnifying the party injured by such refusal or neglect, and the remainder forms part of the Consolidated Revenue Fund. R.S.O. 1960, c. 110, s. 96.

Enforcing  
payment  
of fine

**97.—**(1) If a party is desirous of having at the trial or hearing the testimony of a person residing out of Ontario, the judge, upon hearing the parties, may order the issue of a commission out of and under the seal of the court to a commissioner to take the examination of such person.

Power to  
issue com-  
missions  
to take  
evidence

Applicant  
and  
employees

(2) An order shall not be made for the issue of a commission for taking the testimony of the party applying therefor, or of any person in his employment, unless in the opinion of the judge a saving of expenses will be caused thereby, or unless it is clearly made to appear that the party or person is aged, infirm, or unable from sickness to appear as a witness.

Persons in  
Ontario

(3) If it is made to appear to the judge that a material and necessary witness residing in Ontario is sick, aged or infirm, or that he is about to leave Ontario, and that his attendance as a witness cannot be procured, the judge may make an order appointing a suitable person to take his testimony.

Idem

(4) An order may also be obtained for the examination of a witness who resides in a remote part of Ontario and at a great distance from the place of trial, if it is made to appear that his attendance cannot be procured, or that the expense of his attendance would be out of proportion to the amount involved in the action, or so great that the party desiring his attendance should not under the circumstances be required to incur such expense.

Service of  
order

(5) A copy of the order, with two days notice of the time and place of the examination, shall be served upon the opposite party, or his agent, who may appear and cross-examine the witness.

Rules, S.C.O.

(6) The rules of the Supreme Court, so far as they are applicable, apply to every commission or order issued under this section.

Costs of  
commission

(7) The costs of the issue, transmission, execution and return of a commission issued or order made under this section are in the discretion of the judge, who may allow a sum in gross therefor, and the costs may be added to any other costs to be paid to the party entitled thereto, and may be recovered in like manner as the ordinary costs of an action. R.S.O. 1960, c. 110, s. 97.

Admissi-  
bility of  
books of  
account

**98.** In an action for a debt or money demand of not more than \$25, and in case of a defence of set-off or of payment so far as it extends to \$25, the judge, on being satisfied of their general correctness, may receive the plaintiff's, defendant's or garnishee's books as evidence, and may also receive as evidence the affidavit of any party or witness resident out of the county, but may require the party or witness to answer written interrogatories upon oath. R.S.O. 1960, c. 110, s. 98.

When  
evidence  
may be  
given by  
affidavit

**99.—**(1) In an action, the judge may in his discretion permit the evidence of any person out of the jurisdiction or in some remote part of Ontario to be given by affidavit upon such terms as to cross-examination, the answering of written interrogatories upon oath and the production of books and papers for inspection and otherwise as he considers necessary.



(2) Where in the opinion of the judge expense is unnecessarily incurred by reason of any objection of either party to the reception of affidavit evidence or by cross-examination, he may order that party to pay the costs of both parties occasioned by the objection. R.S.O. 1960, c. 110, s. 99.

Costs occasioned by objection to affidavit evidence

**100.** A barrister or solicitor, or any other person not prohibited by the judge, may appear at the trial or hearing of an action as agent for a party thereto. R.S.O. 1960, c. 110, c. 100.

Who may act as agents at trial

**101.** The judge shall, in court, openly, and as soon as may be after the trial, pronounce his decision, but, if he is not then prepared to pronounce a decision, he may postpone it until it is convenient for him to give it, and he shall then send it to the clerk, who shall forthwith enter the judgment and by registered mail notify the parties or their agents thereof. R.S.O. 1960, c. 110, s. 101.

Judge may give judgment instanter or postpone judgment

**102.**—(1) The judge may order the times and the proportions in which a sum and costs recovered by judgment shall be paid, having regard to section 117.

Order as to payment

(2) Unless otherwise ordered, execution shall not issue within fifteen days after the entry of judgment, but the judge may order the amount of the judgment or any instalment thereof to be paid into court. R.S.O. 1960, c. 110, s. 102.

Execution not to issue for 15 days after judgment

**103.**—(1) Unless otherwise provided, the costs of and incidental to all actions are in the discretion of the judge, who has full power to determine by whom and to what extent costs shall be paid.

Judge's authority as to costs

(2) If a judge does not make an order as to costs, they abide the event of the action.

Costs to abide event except by order

(3) Where the plaintiff does not appear or does not prove his claim, the judge may award to the defendant a sum for his trouble and attendance not exceeding what he would be entitled to if a witness on his own behalf, to be recovered by execution.

Allowance to defendant for attendance

(4) Where the plaintiff fails to recover judgment by reason of the court not having jurisdiction, the judge nevertheless has the power conferred by subsection 1, and the recovery of the costs awarded may be enforced by the same remedies by which costs of proceedings within the proper competence of the court are recoverable. R.S.O. 1960, c. 110, s. 103.

Costs when action fails for want of jurisdiction

**104.**—(1) Where in an action for more than \$200 that is contested as to liability or quantum, and in the cases mentioned in clauses *b* and *c* of section 108, a counsel or solicitor has been employed by the successful party in the conduct of the cause or

Counsel fee, where action contested



defence, the judge may direct that a sum of \$5, to be increased according to the difficulty and importance of the case to not more than \$40 or, if the case occupies more than one day, to not more than \$50, be allowed to the successful party and it shall be added to the costs.

where  
assessment  
uncontested

(2) Where in an assessment of damages, upon which the defendant does not appear personally or by counsel and in which judgment is given for more than \$200, a counsel or solicitor has been employed by the plaintiff, the judge may direct that a sum of \$5, to be increased according to the difficulty and importance of the case to not more than \$25, be allowed to the plaintiff and it shall be added to the costs.

where  
adjournment

(3) Where a party applies for and obtains an adjournment in an action involving more than \$200 that is contested as to liability or quantum, the presiding judge may, if he is of opinion that counsel for any of the other parties has been unduly inconvenienced by the adjournment, award him a counsel fee of \$10. R.S.O. 1960, c. 110, s. 104; 1964, c. 25, s. 2.

Costs of  
witnesses  
in certain  
cases

**105.** Where the defendant having disputed the plaintiff's claim, afterwards and before the opening of the court, confesses judgment or pays the claim so short a time before the sittings of the court that the plaintiff cannot in the ordinary way be notified thereof, and without such notice the plaintiff in good faith and reasonably incurs expenses in procuring witnesses or in attending at court, the judge may order the defendant to pay such costs or such portion thereof as to him seem just. R.S.O. 1960, c. 110, s. 105, *amended*.

#### NEW TRIALS: APPEALS

New trial

**106.**—(1) Upon application made within fourteen days after the trial or, where the decision is not given at the trial, after the mailing of the notice of the decision to the party applying and upon good grounds being shown, the judge, after affording the other parties to the action an opportunity to be heard, may grant a new trial upon such terms as he thinks proper.

Extending  
time for  
application

(2) If reasonable excuse for the delay is shown to the satisfaction of the judge, the application may be made at any time within fourteen days after the expiration of the first-mentioned fourteen days.

Where  
personal  
service  
not affected

(3) Where the summons has not been personally served, the application may be made at any time within fourteen days after the judgment has come to the knowledge of the defendant.

Judgment on  
application  
for new trial

(4) Instead of granting a new trial, the judge may pronounce the judgment that in his opinion ought to have been pronounced at the trial, and may order judgment to be entered accordingly.

(5) Either upon the application or upon granting a new trial, the judge may make such order staying proceedings as he considers proper. R.S.O. 1960, c. 110, s. 106. Stay of proceedings

**107.** An appeal does not lie if, before the commencement of the trial, there is filed with the clerk an agreement in writing not to appeal, signed by the parties or their agents, and the judge shall note in his minutes whether or not the agreement was so filed, and the minutes are conclusive evidence upon that point. R.S.O. 1960, c. 110, s. 107. Parties may agree not to appeal

**108.**—(1) Subject to section 107, an appeal lies to the Court of Appeal from the decision of the judge at or after the trial or upon an application for a new trial, except in cases where a new trial has been granted, Appeal to Court of Appeal

- (a) in an action or garnishee proceeding where the sum in dispute exceeds \$200, exclusive of costs;
- (b) in interpleader where the money or the value of the goods or chattels claimed or proceeds thereof exceed \$200, or where the damages claimed by or awarded to either party against the other or against a bailiff exceeds the sum of \$120;
- (c) where the parties consent to an appeal; or
- (d) where the effect of the decision is to determine that a general assessment made by a mutual insurance company is invalid, but the company, unless the Court of Appeal otherwise directs, shall pay the respondent's costs of the appeal between solicitor and client on the county court scale in any event. R.S.O. 1960, c. 110, s. 108; 1964, c. 25, s. 3.

(2) On the day on which section 17 of *The Judicature Act* is proclaimed in force, subsection 1 is amended by striking out "Court of Appeal" in the first and second lines and in the fourth line of clause *d* thereof and by inserting in lieu thereof in each instance "Supreme Court". 1970, c. 120, ss. 8, 15 (4). Amendment to subs. 1  
R.S.O. 1970,  
c. 228

**109.** Where a claim and counterclaim arise out of the same transaction or occurrence and an appeal is brought from the judgment upon either, the judgment upon both is subject to review by the court. R.S.O. 1960, c. 110, s. 109. Appeal, where counter-claim

**110.**—(1) Where an appeal lies, each party shall, before or at the trial, leave with the clerk a memorandum in writing of the name and place of residence of some person resident in the county town upon whom the notice of appeal, and all other papers thereafter requiring service, may be served for him, and service Agents for service where right to appeal

upon such person, or, in his absence, at his place of residence, is sufficient, and, in the event of failure to leave such memorandum, all papers requiring service upon the party so failing may be served upon the clerk, or left at his office, and the clerk shall forthwith send, by registered mail, all papers so served upon him, to the person entitled thereto.

Case of  
judicial  
district

(2) This section does not apply to a provisional judicial district. R.S.O. 1960, c. 110, s. 110.

Certified  
proceedings,  
etc., to be  
furnished  
by clerk

**111.** The clerk shall, at the request of the appellant or his agent, certify under his hand to the Registrar of the Supreme Court at Toronto, the summons with all notices endorsed thereon, the claim, and any notice of defence, the evidence and all objections and exceptions thereto, and all motions or orders made, granted, or refused therein, together with such notes of the judge's charge as were made, the decision when in writing, or the notes thereof, and all affidavits and other papers in the action, and shall furnish to the parties, when required so to do, copies of the proceedings so certified, or such part thereof as is required, and for every copy he is entitled to receive 5 cents for every 100 words. R.S.O. 1960, c. 110, s. 111; 1970, c. 120, s. 9.

Appeal,  
when and  
how made

**112.—**(1) The appeal shall be made in the time and manner prescribed by the rules of court and shall be heard and determined by one justice of appeal.

Stay of  
proceedings

(2) After the appeal has been set down to be heard, the execution of the judgment appealed from shall be stayed pending the appeal, unless otherwise ordered by a judge of the Supreme Court. R.S.O. 1960, c. 110, s. 112.

Amendment  
to subs. 1  
R.S.O. 1970,  
c. 228

(3) On the day on which section 17 of *The Judicature Act* is proclaimed in force, subsection 1 is amended by striking out "and shall be heard and determined by one justice of appeal" in the second and third lines. 1970, c. 120, ss. 10, 15 (4).

Powers and  
duties of  
Court of  
Appeal  
R.S.O. 1970,  
c. 94

**113.—**(1) On an appeal to the Court of Appeal under this Act, the Court of Appeal has the same powers and duties as in an appeal coming before it under *The County Courts Act* and the practice and procedure applicable thereto applies *mutatis mutandis* to appeals under this Act. R.S.O. 1960, c. 110, s. 113.

Amendment  
to subs. 1

(2) On the day on which section 17 of *The Judicature Act* is proclaimed in force, subsection 1 is amended by striking out "Court of Appeal" in the first line and in the second line and inserting in lieu thereof in each instance "Supreme Court". 1970, c. 120, ss. 11, 15 (4).

Taxable  
costs on  
appeal

**114.** The costs taxable between party and party of and incidental to an appeal are the actual disbursements, and no greater amount over and above actual disbursements than \$25



inclusive of counsel fee, and the costs of an appeal between solicitor and client are taxable on the county court scale. R.S.O. 1960, c. 110, s. 114.

**115.**—(1) Where the judge before whom an action is tried dies before giving judgment, or having reserved his judgment after having heard the evidence does not deliver judgment within six months thereafter, any party may, upon notice to all other parties, apply to the Chief Judge of the County and District Courts for an order directing that the action be reheard by such judge as he designates. 1961-62, c. 35, s. 4, *part*; 1968-69, c. 30, s. 3. Rehearing

(2) An order made under subsection 1 shall name the place where the action is to be reheard, and in making such order the chief judge may give such other directions as he considers fit. Idem

(3) No further evidence shall be received upon such rehearing except by leave of the court. Further evidence

(4) No proceedings in the action shall thereafter be taken without the order of the chief judge after notice. Further proceedings

(5) Upon such rehearing, the evidence, exhibits, and papers used at the trial shall be read, and after argument by counsel the presiding judge shall deal with the action as on an original trial and shall direct that judgment be entered by the court clerk in accordance with his findings. Judgment on rehearing

(6) The costs of the rehearing shall be fixed by the judge presiding at the rehearing, who shall also direct by whom they are to be paid. Costs of rehearing

(7) An appeal lies from such judgment or finding in the same manner and on the same terms as if the judgment had been pronounced at the trial. 1961-62, c. 35, s. 4, *part*. Appeal

#### JUDGMENTS; EXECUTIONS; TRANSCRIPTS

**116.**—(1) Where the judge gives judgment or makes an order for the payment of money and default is made in payment of the whole or of any part thereof, the party in whose favour the order has been made is entitled to execution against the goods and chattels and, subject to section 126, the land of the party in default. When money not paid pursuant to order, execution to issue

(2) The clerk, at the request of the party prosecuting the judgment or order, shall issue an execution to a bailiff of the court, or to a bailiff of any other court in the county, who by virtue thereof shall levy by distress and sale of the goods and chattels of the party in default such sum and costs, with interest thereon from the date of the order or of the entry of the judgment, as have been ordered to be paid and remain due, and shall pay such sum, costs and interest over to the clerk. Form of execution

Jurisdiction  
of bailiff

(3) The bailiff of a small claims court has jurisdiction throughout the county to enforce execution and levy by distress and sale of the goods and chattels of the debtor the amount of any judgment and costs and to carry out all other process and proceedings to enforce payment of the judgment, and, where the limits of a small claims court include parts of two counties, such jurisdiction applies throughout both of such counties, but, where a bailiff goes outside the limits of the division for which he is appointed under this subsection, he is not entitled to any mileage allowance in respect of travel outside such division. R.S.O. 1960, c. 110, s. 115.

Execution  
not to be  
postponed  
for more  
than fifty  
days

**117.** Except where a new trial is granted, the issue of execution shall not be postponed for more than fifty days from the service of the summons, without the consent of the party entitled thereto, but, if it is proved to the satisfaction of the judge that a party is unable from sickness or other cause to pay the debt or damages recovered against him, or any instalment thereof ordered to be paid, or that for any other reason the issue of execution should be further postponed, the judge may stay the judgment, order or execution for such time and on such terms as he thinks fit, and so from time to time until it is proved that the cause of disability has ceased. R.S.O. 1960, c. 110, s. 116.

Cross  
judgments  
may be  
set off

**118.** If there are cross judgments between the parties, the party who has obtained judgment for the larger sum shall have execution for the excess and satisfaction for the remainder, and also satisfaction on the judgment for the smaller sum shall be entered, and, if both sums are equal, satisfaction shall be entered upon both judgments. R.S.O. 1960, c. 110, s. 117.

Writs of  
execution,  
where to be  
executed

**119.** Except in actions brought under section 65, an execution or attachment shall not be executed out of the limits of the county over which the judge of the court from which the execution or attachment issues has jurisdiction. R.S.O. 1960, c. 110, s. 118.

Effect of  
payment of  
execution  
before sale

**120.** Where the party against whom an execution has been issued pays or tenders to the clerk or to the bailiff, before an actual sale of his goods and chattels, the amount to be levied or so much thereof as the party in whose favour the execution has issued agrees to accept in full of his debt, together with the fees to be levied, the execution shall thereupon be superseded, and the bailiff shall withdraw from possession. R.S.O. 1960, c. 110, s. 119.

Notice to  
plaintiff of  
*nulla bona*  
return

**121.—**(1) The clerk, immediately after a return of *nulla bona* has been made to an execution issued on a transcript of judgment, shall forward by registered mail to the plaintiff and to the clerk who issued the transcript a notice informing them of the date at which the execution issued, the date at which it was returned by the bailiff, and the return made.



(2) The clerk shall file among the papers in the action the post-office certificate of registration, and the absence from among the papers of the certificate is *prima facie* evidence against the clerk that the notice was not forwarded. R.S.O. 1960, c. 110, s. 120.

Registration  
certificate  
to be filed

**122.** Where a memorandum of the amount of a judgment or execution or a certificate of a claim within the jurisdiction of a small claims court is filed with a sheriff under *The Creditors' Relief Act*, and the amount is not paid in full, and the sheriff is unable to make the money thereon, the creditor may obtain from the sheriff a return according to the fact and file it with the clerk of the court in which the judgment was recovered, or, in the case of a certificate of a claim, with the clerk of the court of the division where the cause of action arose or where the debtor or one of the debtors, if more than one, resides, and the clerk shall enter the return in his procedure book, and in the latter case the claim thereupon becomes a judgment of the court for the unpaid balance due thereon appearing by the return and may be enforced in the same manner as a judgment of the court. R.S.O. 1960, c. 110, s. 121.

Enforcing  
claims under  
R.S.O. 1970,  
c. 97  
in small  
claims courts

**123.** In the case of the death of either or both of the parties to a judgment, the party in whose favour the judgment has been entered, or his personal representative in case of his death, may in the prescribed form revive the judgment against the other party, or his personal representative in case of his death, and may issue execution thereon. R.S.O. 1960, c. 110, s. 122.

Revivor of  
judgment in  
case of death  
of party

**124.**—(1) Every execution against goods shall bear the date of its issue and is returnable immediately after the execution thereof, and, if unexecuted, remains in force for three months, unless renewed, but may be renewed from time to time in the prescribed manner by the clerk at the instance of the execution creditor for six months from the date of the renewal.

Execution,  
when dated  
and  
returnable

(2) The execution so renewed has effect and is entitled to priority according to the time of the original delivery thereof to the bailiff. R.S.O. 1960, c. 110, s. 123.

Priority of  
execution

**125.** Where the judge is satisfied by the oath of the execution creditor or by other testimony that he will be in danger of losing the amount of the judgment if compelled to wait until the day appointed for the payment thereof before an execution can issue, the judge may order an execution to issue at such time as he considers just. R.S.O. 1960, c. 110, s. 124.

Judge may  
order an  
execution  
to issue  
before  
regular day

**126.**—(1) Where the sum remaining unsatisfied on a judgment amounts to \$40 or more, the judgment creditor is entitled to an execution against the land of the judgment debtor, and the clerk, at the request of the party prosecuting the judgment, shall

Executions  
against  
lands



issue an execution against the land of the judgment debtor directed to the sheriff of a county.

Effect of  
execution

(2) The execution has the same force and effect as an execution issued from a county court.

Notice  
to debtor

(3) Where an execution against lands has been placed in the hands of the sheriff, he shall give notice thereof to the judgment debtor by registered mail addressed to him at his present or last known residence.

Sheriff's  
return to be  
made to  
clerk

(4) The sheriff shall make a return thereof and pay any money made thereon to the clerk of the court out of which the execution issued.

Further  
proceedings  
by execution  
creditor

(5) Until the judgment is fully satisfied, the execution creditor may pursue the same remedy for the recovery thereof as if the judgment had been obtained in the county court.

Duration  
and renewal  
of writ

(6) The writ, if unexecuted, remains in force for three years only from its issue, unless renewed, but may be renewed from time to time in the prescribed manner by the clerk at the instance of the execution creditor for three years from the date of the renewal.

Formal  
effect of  
renewal

(7) The execution may be renewed by being marked on the margin with a memorandum signed by the clerk stating the day, month and year of the renewal, and a writ so renewed has effect and is entitled to priority according to the time of the original delivery thereof to the sheriff.

Evidence of  
renewal

(8) The production of an execution purporting to be marked with the memorandum is *prima facie* evidence of its having been renewed.

Fees on  
writ against  
lands

(9) The sheriff is entitled to the same fees as upon a writ of execution against land issued from a county court.

Certificate  
in lieu of  
execution

(10) Where land is on hand for want of buyers, a sheriff to whom the execution is directed may endorse thereon a return of "land on hand for want of buyers" and shall return a certificate of the endorsement to the clerk of the small claims court from whose office the execution issued in lieu of the writ, and the endorsement and the certificate so returned shall be deemed to be a return of the writ, and thereupon a writ of *venditioni exponas* may be issued by the clerk for the sale of the land, and the original execution remains in force for the residue. R.S.O. 1960, c. 110, s. 125.

Bailiff after  
seizure of  
goods to  
endorse date  
of seizure  
and give  
notice of sale

**127.** The bailiff, after making a seizure under an execution against goods, shall endorse thereon the date of the seizure, and shall immediately and at least eight days before the time appointed for the sale put up at three of the most public places in the division where any property liable to be sold under the execution has been taken, public notice, signed by himself, of the time and place in the division when and where it will be exposed for sale, and the notice shall describe the property taken. R.S.O. 1960, c. 110, s. 126.

**128.** The property so taken shall not be sold until the expiration of eight days at least after the seizure thereof, except upon the request in writing under the hand of the party whose property has been seized. R.S.O. 1960, c. 110, s. 127.

Goods not to be sold until 8 days after seizure

**129.** Where a bailiff has seized property under an execution or attachment and the action is afterwards settled between the parties, or the defendant makes an assignment for the general benefit of his creditors, the bailiff, until his fees and disbursements are fully satisfied, has a lien therefor upon so much of the property as will reasonably satisfy such fees and disbursements, but, in the event of a dispute as to the proper amount of the fees and disbursements, the amount claimed therefor may be paid into court until the proper amount is certified by the judge, and on such payment into court the lien ceases. R.S.O. 1960, c. 110, s. 128.

Bailiff's fees when action settled

**130.—(1)** The clerk, upon the application of a person having an unsatisfied judgment in his favour, shall prepare a transcript of the judgment in the prescribed form, and shall send it to the clerk of any other small claims court, whether in the same or in any other county, with the certificate at the foot thereof signed by him, sealed with the seal of the court, and addressed to the clerk of the court to whom it is to be sent, stating the amount unpaid upon the judgment, the date at which it was recovered, and the post-office address of the person applying for the transcript, and the clerk to whom the certificate is addressed shall, on the receipt of the transcript and the certificate, enter the transcript and the amount due on the judgment according to the certificate in a book to be kept in his office for the purpose, and all proceedings may be taken for enforcing the judgment in such last-mentioned court.

Transcript of unsatisfied judgment

(2) After a transcript has been issued under this section, no further proceedings shall be had in the court from which the transcript issued without an order from the judge, unless the person who obtained the transcript, or his agent, makes and files with the clerk an affidavit stating,

Proceedings stayed

- (a) that the judgment remains unsatisfied in whole or in part;
- (b) that the execution issued out of the court to which the transcript was sent has been returned *nulla bona*, or that he believes the judgment debtor has not sufficient goods in the division of that court to satisfy the judgment,

and, upon the affidavit being filed, the clerk may issue such other process as the applicant is entitled to and may direct.

(3) Where a person has a judgment in the Supreme Court or in a county or district court and he desires to garnish the wages of the judgment debtor, he may file a certified copy of the judgment in the small claims court having jurisdiction to issue a direction to garnish the wages of the judgment debtor, and thereupon the

Transfer of Supreme Court and county court judgments



clerk of that court shall enter the judgment in the same manner as a transcript of judgment from another small claims court, and thereafter directions to garnish the wages of the judgment debtor may issue and subsequent proceedings thereon be taken as though the direction to garnish had been issued under a small claims court judgment.

Maximum  
amount of  
judgment  
against a  
garnishee

(4) Where directions to garnish are issued under subsection 3 and judgment is given against the garnishee, the judgment shall not be for an amount exceeding the jurisdiction of the court in a personal action. R.S.O. 1960, c. 110, s. 129.

#### JUDGMENT SUMMONS: SHOW CAUSE SUMMONS

Judgment  
summons

**131.**—(1) A party having an unsatisfied judgment may procure a judgment summons from the court out of which execution might issue, if the judgment debtor resides or carries on business within the limits of that court.

Judgment  
summons,  
issue of

(2) Where a judgment debtor resides or carries on business in a city where there are two or more small claims courts having territorial jurisdiction within the limits of the city, a judgment summons may issue out of any such court in which the judgment has been recovered or in which a transcript of judgment has been entered.

Metropolitan  
Toronto

(3) Subsection 2 does not apply to small claims courts in The Municipality of Metropolitan Toronto. R.S.O. 1960, c. 110, s. 130 (1-3).

Affidavit  
required  
before  
judgment  
summons

(4) Before the summons is issued the judgment creditor, or his agent, shall make and file with the clerk an affidavit stating,

(a) that the judgment remains unsatisfied in whole or in part; and

(b) in the case of a second or subsequent summons, that the deponent believes that the judgment debtor sought to be examined is able to pay the amount due in respect of the judgment or some part thereof. R.S.O. 1960, c. 110, s. 130 (4); 1968-69, c. 30, s. 4.

Examination  
of judgment  
debtor

(5) The summons shall be served personally upon the judgment debtor at least eight days before the return day, and, if he appears, he may be examined upon oath as to any and what debts are owing to him and touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability that formed the subject of the action, and as to the means and expectation he then had, and as to the property and means he still has of discharging the judgment debt, and as to the disposal he has made of any property.

Examination  
of witnesses

(6) The party obtaining the summons and all witnesses whom the judge thinks requisite may be examined upon oath, touching the inquiries.



(7) The examination shall not be held in open court unless the judge so directs. Place of examination

(8) After the examination or upon written consent signed by the judgment debtor or his solicitor, the judge may make such order as to payment of the judgment and as to the time and manner thereof as he considers proper. Order as to payment

(9) The costs of the summons and of all proceedings thereon shall be costs in the action, unless the judge otherwise directs. Costs

(10) If, after the examination, the judge dismisses the summons, no further judgment summons shall issue out of the same court against the judgment debtor at the suit of the same or any other creditor for a period of six months, except upon an affidavit satisfying the judge that since the examination the party has acquired the means of paying or that he did not then make a full disclosure of his estate, effects and debts upon the examination. R.S.O. 1960, c. 110, s. 130 (5-10). Party examined and discharged not to be again summoned

**132.**—(1) A party who has examined a judgment debtor under a judgment summons may procure a show cause summons from the court out of which the judgment summons issued if the judgment creditor or his agent makes and files with the clerk of the court an affidavit deposing, Show cause summons

- (a) the particulars of the judgment and the amount thereof that remains unsatisfied;
- (b) the particulars of the examination upon the judgment summons and of the order for payment that was made; and
- (c) that the judgment debtor is in default under the order for a period of not less than fourteen days and the particulars thereof.

(2) The summons shall be served personally upon the judgment debtor at least eight days before the return day and, if he appears, he may be examined upon oath as to his default under the order for payment. R.S.O. 1960, c. 110, s. 131 (1, 2). Service

(3) Where the circumstances of the debtor have changed, the judge may vary the order made under section 131. 1968-69, c. 30, s. 5. Variation of order

**133.** If the party summoned,

- (a) does not attend as required by the summons, or at any subsequent date to which the hearing or examination is adjourned, or give a sufficient reason for not attending; or
  - (b) attends and refuses to be sworn or to answer such questions as in the opinion of the judge are proper,
- Committal for contempt

the judge may order him to be committed to a correctional institution in the county in which he resides or carries on business, for any period not exceeding forty days. 1968-69, c. 30, s. 6, *amended*.

When party  
may be  
committed  
for non-  
attendance

**134.** A party failing to attend in answer to a judgment summons or show cause summons is not liable to be committed for the default, unless the judge is satisfied that his non-attendance is wilful. R.S.O. 1960, c. 110, s. 133.

Enforce-  
ment of  
committal  
order

**135.**—(1) Where a judge has ordered a judgment debtor to be committed to a correctional institution, the order shall be enforced by the bailiff, unless the judge directs that the judgment debtor appear before him at a named time and place to explain his contempt, in which case notice thereof shall be sent to the judgment debtor by registered mail.

Appearance  
to explain  
contempt

(2) Where the judgment debtor appears to explain his contempt,

(a) if the judge is of opinion that the default was wilful, he shall order the bailiff to enforce the warrant of commitment; or

(b) if the judge is of opinion that the default was not wilful, he shall order the judgment debtor to attend for examination at the next sittings of the court to be held for the hearing of judgment summonses and, in the event that the judgment debtor does not so attend, the judge presiding at the sittings may order that he be forthwith committed to a correctional institution. R.S.O. 1960, c. 110, s. 134 (1, 2), *amended*.

Non-  
appearance  
to explain  
contempt

(3) Where the judgment debtor does not appear at the time and place named in the notice, the judge may direct that the warrant of commitment be enforced. R.S.O. 1960, c. 110, s. 134 (3).

Costs  
allowed  
him in  
certain  
cases

**136.** Where at the hearing upon a judgment summons or show cause summons it appears to the judge by the examination of the party, or otherwise, that he ought not to have been summoned, or, where the judgment creditor or his agent does not appear, the judge may award the party summoned compensation for his trouble and attendance, to be recovered against the judgment creditor in the same manner as a judgment of the court. R.S.O. 1960, c. 110, s. 135.

Warrant of  
commitment

**137.**—(1) Where an order of commitment has been made, the clerk shall issue, under the seal of the court, a warrant of commitment directed to the bailiff of any court in the county and the bailiff may, by virtue of the warrant, take the party and deliver him to the superintendent of the correctional institution in which he has been directed to be imprisoned. R.S.O. 1960, c. 110, s. 136 (1); 1968-69, c. 30, s. 7, *amended*.

(2) All constables and other peace officers within their respective jurisdictions shall aid in the execution of the warrant, and the superintendent of the correctional institution shall receive and keep the party therein until discharged under this Act, or otherwise, in due course of law. R.S.O. 1960, c. 110, s. 136 (2), *amended*.

Constables,  
etc., to  
execute  
warrants

**138.** A party shall be discharged out of custody,

(a) by order of the judge; or

(b) at the expiration of the time prescribed in the warrant of commitment. R.S.O. 1960, c. 110, s. 137.

When debtor  
in custody  
shall be  
discharged

**139.—**(1) The judge may rescind or alter the order for payment made upon a judgment summons or show cause summons and make any further or other order for the payment of the debt or damages recovered and costs forthwith, or by instalments, or in any other manner that he thinks reasonable.

Alteration  
of order  
for  
payment

(2) The judge may rescind or alter or stay the operation of any order of commitment made by him, whether or not it has been acted on. R.S.O. 1960, c. 110, s. 138.

Order of  
commitment

**140.—**(1) A party having an unsatisfied judgment against a corporation may issue a summons calling upon any officer of the corporation to attend before the judge and submit to examination as to the property and assets of the corporation and its dealings with them, and, if the person summoned fails to attend or to submit to examination, he is liable to be committed to the correctional institution in the county for any period not exceeding forty days. R.S.O. 1960, c. 110, s. 139 (1), *amended*.

Examination  
of officer  
of company

(2) The summons shall be issued and served as nearly as may be in the same manner as in the case of a summons to a judgment debtor. R.S.O. 1960, c. 110, s. 139 (2).

Summons

#### GARNISHMENT PROCEEDINGS

**141.** For the purposes of garnishment proceedings under this Act,

Interpre-  
tation

(a) money that is earned or owing, although not yet due or payable, shall be deemed to be "owing or accruing"; and

(b) a reference to the amount of the judgment creditor's judgment or the plaintiff's claim, or words of like import, shall be deemed to include the amount of costs that have been incurred. R.S.O. 1960, c. 110, s. 141, *amended*.

**142.—**(1) After judgment has been recovered, the clerk of the court in which the judgment was recovered or the clerk of the court to which the judgment has been transcribed shall, upon the filing of an affidavit as required by subsection 2, issue a direction

Garnishment  
after  
judgment



to garnish directing that all debts owing or accruing to the judgment debtor be attached to satisfy the judgment.

Material on  
application

(2) Upon the making of the application, there shall be filed with the clerk an affidavit stating,

- (a) the date and amount of the judgment and the amount remaining unsatisfied;
- (b) that the deponent has reason to believe that the person sought to be named as garnishee,
  - (i) resides or carries on business in the county where the court is located, and
  - (ii) is indebted to the judgment debtor;
- (c) where the judgment creditor intends to effect service of the direction by registered mail, the address where the judgment debtor and garnishee reside or carry on business; and
- (d) where the judgment creditor seeks to obtain a direction to garnish in respect of wages and without exemption, that the debt was incurred for board or lodging or that the judgment debtor is an unmarried person having no one dependent upon him for support.

Preparation  
of affidavit  
and  
direction

(3) The direction to garnish, which shall be in the prescribed form, and the affidavit used upon the application therefor shall be prepared,

- (a) where the judgment creditor has a solicitor or agent, by the solicitor or agent; and
- (b) where the judgment creditor has no solicitor or agent, by the judgment creditor or, if he so requests, by the clerk of the court. R.S.O. 1960, c. 110, s. 142.

Notices  
upon a  
direction

**143.** The following notices shall appear upon every direction to garnish:

A

#### NOTICE TO GARNISHEE

Within ten days after the mailing to you or personal service upon you of this direction you are required to either,

- (a) pay to the clerk of the court the amount owing or accruing from you to the judgment debtor or sufficient thereof to satisfy the judgment of the judgment creditor including costs; or
- (b) file with the clerk of the court a statement signed by you stating,
  - (i) that at the time of the receipt by you of this direction to garnish there was no money owing or accruing from you to the judgment debtor, and
  - (ii) where you rely upon a statutory or other defence or set-off, the particulars thereof.

Where an amount less than the amount of the judgment debt is paid to the clerk of the court, you are required to file with the clerk a statement signed by you in explanation thereof.

Upon your default in complying with the requirement above set out, the judgment creditor may apply to the court for judgment against you, the garnishee, for an amount equal to the unpaid portion of his judgment against the judgment debtor and for his costs.

Where the amount sought to be garnished is wages, this notice shall be read subject to *The Wages Act*.

B

NOTICE TO JUDGMENT DEBTOR

At any time within ten days after the mailing to or personal service upon you of this direction you may dispute this direction to garnish or any of the statements therein contained by filing with the clerk of the court a notice setting out the particulars of your dispute.

C

NOTICE TO ALL PARTIES TO THIS  
PROCEEDING

Any of the parties to this proceeding, that is to say, any judgment creditor, judgment debtor or garnishee, may in writing request the clerk of the court to place it upon the trial list in order that the rights of any such party may be determined.

R.S.O. 1960, c. 110, s. 143.

**144.**—(1) The direction to garnish shall be served upon both the judgment debtor and the garnishee as soon as is convenient, and, in any event, not more than fifteen days after its issue.

Service of  
direction to  
garnish

(2) Service may be effected,

Method of  
service

(a) by personal service; or

(b) by registered mail addressed to each or either of them at the address set out in the affidavit referred to in section 142. R.S.O. 1960, c. 110, s. 144.

**145.** Service upon the garnishee of the direction to garnish has the effect, subject to the rights of other persons, of attaching and binding in his hands all debts then owing or accruing from him to the judgment debtor, and payment by the garnishee into court of the debt so attached to the extent to which the judgment is unsatisfied is to that extent a discharge of the debt. R.S.O. 1960, c. 110, s. 145.

Effect of  
service

**146.** Subject to any request for a hearing by a judge, money paid into court by a garnishee pursuant to a direction to garnish shall, upon the filing with the clerk of an affidavit proving service upon the judgment debtor of the direction to garnish, be paid out to the judgment creditor, but no such payment to the judgment creditor shall be made until fifteen days after the date of such service. R.S.O. 1960, c. 110, s. 146.

Payment  
out

Payment  
to any but  
primary  
creditor void

**147.** Payment by the garnishee after service on him of the direction to garnish, otherwise than into court, except by leave of the judge, is, to the extent of the judgment creditor's claim and costs, void, and the garnishee is liable to again make payment to the extent of the judgment creditor's claim, unless the judge otherwise orders. R.S.O. 1960, c. 110, s. 147.

Hearing  
required

**148.**—(1) Where a party requests the clerk in writing to place the proceeding upon the trial list, the clerk shall place it upon the list for the first court day in respect of which notice as herein required may be given, and at least ten days before such day shall mail notice thereof by registered mail to each of the parties to the proceeding.

Disposition  
at hearing

(2) Upon the hearing, the judge shall determine the matter in a summary manner and make such order as he considers fit, and, where the garnishee has defaulted under the notice lettered A set out in section 143, he may give judgment in favour of the judgment creditor against the garnishee.

Defences of  
garnishee

(3) Upon a hearing, in determining any question of liability as between the judgment debtor and the garnishee, the judge shall have regard to any statutory or other defence or set-off that has been set up by the garnishee. R.S.O. 1960, c. 110, s. 148.

Adverse  
claims

**149.** Where a person other than the judgment creditor or judgment debtor claims to be entitled to the debt owing or accruing from the garnishee or any part thereof by assignment or otherwise, the judge, after notice to all persons interested, may inquire into and decide upon the claim, and, where there is more than one claim, decide upon the priority in which the respective claims are entitled to rank on the debt as the justice of the case requires. R.S.O. 1960, c. 110, s. 149.

Costs where  
garnishee  
unsuccessful

**150.** Where a direction to garnish has been issued and no moneys are realized thereon, the costs thereof shall not be costs against the judgment debtor, unless the judge, who may give his direction upon an *ex parte* application, otherwise directs. R.S.O. 1960, c. 110, s. 150.

Garnishment  
before  
judgment

**151.**—(1) Where a judgment has not been recovered, a plaintiff in an action in which a debt or money demand summons may be issued may cause to be issued out of the court of the division in which the garnishees, or one of them, if they are joint garnishees, reside or carry on business, a garnishment summons with the particulars of his claim against the defendant with reasonable certainty and detail attached thereto or endorsed thereon.

Summons  
to be  
deemed  
debt or  
money  
demand  
summons

(2) As between the plaintiff and the defendant, the garnishment summons shall be deemed a debt or money demand



summons, and the provisions of this Act applicable to a debt or money demand summons and proceedings thereon apply.

(3) A copy of the garnishment summons and particulars shall be served on the defendant and on the garnishee in the manner provided for the service of a summons in other actions. R.S.O. 1960, c. 110, s. 151. Service of  
summons

**152.** A garnishment summons shall be in the same form as a summons to a defendant, but, Form of  
garnishment  
summons

- (a) the name of the garnishee shall appear in the style of cause; and
- (b) the following notice shall appear thereon:

NOTICE TO GARNISHEE

Within ten days of the service upon you of this summons you are required to either,

- (a) pay to the clerk of the court the amount owing or accruing from you to the defendant or sufficient thereof to satisfy the claim of the plaintiff including costs; or
- (b) file with the clerk of the court a statement signed by you stating,
  - (i) that at the time of the receipt by you of this summons there was no money owing or accruing from you to the defendant, and
  - (ii) where you rely upon a statutory or other defence or set-off, the particulars thereof.

Where an amount less than the amount of the judgment debt is paid to the clerk of the court, you are required to file with the clerk a statement signed by you in explanation thereof.

Upon your default in complying with the requirements above set out, the plaintiff may apply to the court for judgment against you, the garnishee, for an amount equal to the unpaid portion of any judgment he may recover in this action against the defendant and for his costs.

R.S.O. 1960, c. 110, s. 152.

**153.** Service upon the garnishee of a garnishment summons has the same effect and consequence as service of a direction to garnish. R.S.O. 1960, c. 110, s. 153. Effect of  
summons

**154.**—(1) Where judgment is obtained against the defendant under sections 88, 89 or 90, or is obtained at the trial, or where judgment is not then given, on proof of the service on the defendant of a copy of the garnishment summons and particulars, and of the debt due and owing by the defendant, the judge, on proof of the amount owing or accruing due to the defendant from the garnishee, may give judgment against the garnishee in the prescribed form for the amount so owing or accruing from him or sufficient thereof to satisfy the claim of the plaintiff and costs, which sum the garnishee shall pay into court towards the satisfaction of the claim and costs, and, in default, execution may Judgment  
against  
garnishee

issue therefor, if due, or as it becomes due, or at such later period as the judge orders.

Hearing of  
garnishee

(2) Where the garnishee in a statement signed by him and filed with the clerk of the court sets up a statutory or other defence or set-off, he shall be given notice of a hearing at which he may furnish proof of such defence or set-off before judgment is given against him. R.S.O. 1960, c. 110, s. 154.

Adverse  
claims

**155.** Where a person, other than the plaintiff or defendant, claims to be entitled to the debt owing or accruing from the garnishee or any part thereof by assignment or otherwise, the judge, after notice to all persons interested, may inquire into and decide upon the claim, and, where there is more than one claim, decide upon the priority in which the respective claims are entitled to rank on the debt as the justice of the case requires. R.S.O. 1960, c. 110, s. 155.

#### CONSOLIDATION ORDERS

Application  
for consoli-  
dation order

**156.**—(1) A judgment debtor against whom more than two small claims court judgments remain unsatisfied in whole or in part may apply to the judge of the court of the division in which he resides for a consolidation order. R.S.O. 1960, c. 110, s. 156 (1); 1961-62, c. 35, s. 5 (1).

Material on  
application

(2) Upon the application, the judgment debtor shall file his own affidavit setting forth,

- (a) the names and addresses of the creditors who have obtained judgment against him in a small claims court, the date, amount and other particulars of each judgment, and the amount that he owes to each such judgment creditor;
- (b) the amount of his income from all sources, naming them;
- (c) his business or occupation, and the address of his employer;
- (d) a statement of his family or like obligations and of any other relevant facts. R.S.O. 1960, c. 110, s. 156 (2).

Idem

(3) Notice of the time and place of the hearing of the application shall be given by the judgment debtor to the creditors mentioned in clause *a* of subsection 2 by registered mail or personal service at least eight days before the day fixed for the hearing, and, upon the hearing, the judgment debtor shall file an affidavit setting forth that such creditors have been given such notice.

Disposition  
of  
application

(4) Upon the application, the judge may make a consolidation order or dismiss the application. 1961-62, c. 35, s. 5 (2).



(5) Before making a consolidation order the judge shall determine the average weekly income of the judgment debtor for the three-month period immediately before the making of the application, making all proper allowances where the occupation is of a seasonal nature, and shall order the following amounts, calculated to the nearest dollar, to be paid into court under the consolidation order, subject always to any variation that, because of extenuating or other special circumstances, the judge considers proper:

Computa-  
tion of  
amounts

1. 15 per cent of the average weekly income, where the average weekly income does not exceed \$30.
2. 20 per cent of the average weekly income, where the average weekly income exceeds \$30 and does not exceed \$40.
3. 25 per cent of the average weekly income, where the average weekly income exceeds \$40 and does not exceed \$50.
4. 30 per cent of the average weekly income, where the average weekly income exceeds \$50. R.S.O. 1960, c. 110, s. 156 (4).

(6) Where the amounts ordered to be paid under subsection 5 have been varied because of extenuating or other special circumstances such amounts shall not be less than 10 per cent of the average weekly income of the judgment debtor. 1961-62, c. 35, s. 5 (3).

Idem  
Particulars  
of order

- (7) A consolidation order shall set out,
- (a) a list of the small claims court judgments outstanding against the judgment debtor, indicating in each case the date, court and amount and the amount still outstanding;
  - (b) the amounts to be paid into court by the judgment debtor under the consolidation order; and
  - (c) the times of such payments. R.S.O. 1960, c. 110, s. 156 (5).

**157.**—(1) The original consolidation order shall be filed with the clerk of the court in which it was made and a copy thereof, certified by such clerk, may be filed by the judgment debtor in any other small claims court.

Filing order  
and copies

(2) Upon the filing of the original consolidation order, the clerk shall open a consolidation account in the name of the judgment debtor and shall credit thereto all payments made under the consolidation order. R.S.O. 1960, c. 110, s. 157.

Consolida-  
tion account



Objection  
by creditor

**158.**—(1) Where a judgment creditor objects to the amount directed to be paid or to any other judgment creditor being included in the consolidation order, he may apply to the judge for an appointment to determine the matter.

Judge's  
determi-  
nation

(2) Notice of the appointment shall be sent by registered mail to such persons as the judge directs, and, upon the appointment, the judge shall deal with the matter in a summary manner, and his determination is final. R.S.O. 1960, c. 110, s. 158.

Debt  
incurred  
before  
order

**159.**—(1) Where a judgment is obtained against the judgment debtor after the date of the consolidation order for a debt incurred before the date of the consolidation order, the judgment creditor may deliver to the clerk of the court in charge of the consolidation order a notice of his judgment, and his name shall forthwith be added to the consolidation order and he shall thereafter share in the distribution under the consolidation order.

Judgment  
after order

(2) Where a judgment is obtained against the judgment debtor after the date of the consolidation order for a debt incurred after the date of the consolidation order, the consolidation order thereupon terminates.

Further  
order

(3) Where the judgment debtor applies for a further consolidation order, the judge shall examine the nature of the further debt or debts incurred and may make such order. R.S.O. 1960, c. 110, s. 159.

Stay of  
proceedings

**160.** A judgment debtor in respect of whom a consolidation order has been made may, either before default has occurred or not later than the tenth day after default has occurred, apply to the judge for a stay of proceedings, and, upon notice of the hearing being sent by registered mail to all judgment creditors, or such of them as the judge directs, the judge shall hear the application and may by order grant such stay of proceedings as he considers fit or he may dismiss the application. R.S.O. 1960, c. 110, s. 160.

Effect of  
order

**161.**—(1) Subject to subsection 2, no garnishment summons and no proceedings subsequent to judgment, except an execution against lands, shall be taken or continued against the judgment debtor named therein in a small claims court in which a consolidation order or a certified copy thereof is filed.

Default

(2) Where a judgment debtor is in default for a period of twenty days under a consolidation order, the consolidation order is thereupon terminated, subject to any order under section 160 that may have been made before such date, and any judgment creditor named in the consolidation order may obtain from the clerk of the court in which the consolidation order was made a certificate of termination for the purpose of filing it in any court in which a copy of the consolidation order is filed. R.S.O. 1960, c. 110, s. 161 (1, 2).

(3) Where a consolidation order has been terminated under subsection 2, the clerk of the court shall notify, by mail, the judgment creditors named in the order of its termination. Notice of termination  
1961-62, c. 35, s. 6 (1).

(4) Where a consolidation order has terminated under subsection 2, no further consolidation order shall be made in respect of such judgment debtor for a period of one year from the date of such termination. R.S.O. 1960, c. 110, s. 161 (3); 1961-62, c. 35, s. 6 (2). Stay for 1 year

**162.** Notwithstanding subsection 1 of section 161, where a judgment is transferred under subsection 3 of section 130 and a consolidation order has been made against the judgment debtor, the clerk of the court shall add the judgment to the consolidation order but only to the extent of \$400 where the court is in a county and \$800 where the court is in a provisional judicial district. Addition of Supreme and county court judgments to consolidation orders  
R.S.O. 1960, c. 110, s. 162; 1962-63, c. 38, s. 1.

**163.**—(1) All moneys paid into a consolidation account belong to the judgment creditors named in the consolidation order who shall share *pro rata* in the distribution of the moneys. Property in moneys  
R.S.O. 1960, c. 110, s. 163 (1).

(2) The clerk shall distribute the moneys paid into the consolidation account on account of the judgments at least once every six months, and at the time of distribution shall prepare a distribution sheet showing the total amount paid and the distribution thereof. R.S.O. 1960, c. 110, s. 163 (2); 1961-62, c. 35, s. 7; 1965, c. 32, s. 3. Distribution

(3) The distribution shall be on a *pro rata* basis according to the amount of each of the judgments filed with the clerk, or as nearly so as is practicable to the nearest dollar. Basis of distribution

(4) The clerk is entitled to a fee of 10 per cent of the amount paid in of which amount 5 per cent shall be charged to the judgment creditors and 5 per cent to the judgment debtor. Fees of clerk

(5) The amount of the postage paid shall be deducted from the amounts paid to the judgment creditors. R.S.O. 1960, c. 110, s. 163 (3-5). Postage to be deducted

#### ABSCONDING DEBTORS

**164.** Where a person indebted in a sum not less than \$4, either for debt or damages arising upon a contract, and recoverable in or upon a judgment of a small claims court, Warrant for attachment

- (a) absconds from Ontario, leaving personal property liable to seizure under execution for debt in any county; or
- (b) attempts to remove such personal property out of Ontario or from one county to another therein with intent to defraud; or



(c) keeps himself concealed to avoid service of process,

the clerk of any small claims court, upon the application of the creditor and upon his filing an affidavit in the prescribed form made by him, his agent or servant, shall issue a warrant in the prescribed form, directed to the bailiff of the court from which it issued, or to a constable of the county, commanding him to attach, seize, take and safely keep all the personal estate and effects of such person in the county, liable to seizure under execution for debt, or a sufficient part thereof to secure the sum mentioned in the warrant with costs, and to return the warrant forthwith to the court. R.S.O. 1960, c. 110, s. 164.

When judge or justice of the peace may issue attachments, etc.

**165.** The affidavit mentioned in section 164 may be taken before a judge or a justice of the peace, and, upon the filing thereof with him, he may issue a warrant under his hand and seal in the form mentioned in section 164, and he shall forthwith transmit the affidavit to the clerk of the court in whose division it was taken, to be by him filed. R.S.O. 1960, c. 110, s. 165.

Bailiff or constable to seize and make inventory

**166.** Upon receipt of a warrant by the bailiff or constable and upon being paid his lawful fees, including the fees for appraisement, he shall forthwith execute the warrant and make a true inventory of all the estate and effects that he seizes and takes by virtue thereof, and shall, within twenty-four hours after seizure, call to his aid two freeholders, who, being first sworn by him to appraise the estate and effects seized, shall then appraise them, and the bailiff or constable shall forthwith return the inventory attached to the appraisement to the clerk. R.S.O. 1960, c. 110, s. 166.

Proceedings may be continued in same court

**167.** In an action commenced by attachment, the proceedings may be conducted to judgment and execution in the court of the division in which the warrant issued. R.S.O. 1960, c. 110, s. 167.

Proceedings commenced before attachment

**168.** Where proceedings have been commenced before the issue of an attachment, they may be continued to judgment and execution in the court in which the proceedings were commenced. R.S.O. 1960, c. 110, s. 168.

Property attached may be sold under execution

**169.** The property attached upon a warrant of attachment is liable to seizure and sale under the execution to be issued upon the judgment, and, if the property was perishable and has been sold, the proceeds thereof shall be applied in satisfaction of the judgment. R.S.O. 1960, c. 110, s. 169.

Plaintiff not to divide cause of action

**170.** A plaintiff shall not divide a cause of action into two or more actions for the purpose of bringing it within the provisions of sections 164 to 169, but a plaintiff having a cause of action for



which, but for the amount of the claim, an attachment might be issued, may abandon the excess, and the judgment is a full discharge of all demands in respect of the cause of action, and the entry of judgment shall be made accordingly. R.S.O. 1960, c. 110, s. 170.

**171.** Subject to *The Absconding Debtors Act*, where there are several attachments against a party, the proceeds of the property attached shall not be paid over to the attaching creditors according to priority, but shall be rateably distributed among such of them as obtain judgment against the debtor in proportion to the amounts actually due upon their judgments, and no distribution shall take place until, in the opinion of the judge, reasonable time has been allowed to the creditors to proceed to judgment. R.S.O. 1960, c. 110, s. 171.

If several attachments issued  
R.S.O. 1970, c. 2

**172.** Where the proceeds of the property are insufficient to satisfy the claims of all the attaching creditors, a creditor shall not be allowed to share, unless he sued out his attachment and gave notice thereof to the clerk of the court out of which the first attachment issued or into which it was returnable within one month next after the issue of the first attachment. R.S.O. 1960, c. 110, s. 172.

If goods insufficient to satisfy claims of all attaching creditors

**173.**—(1) Where property is attached under sections 164 to 172 by a constable, it shall be handed over forthwith to the bailiff of the court out of which the warrant of attachment issued or into which it was made returnable.

Goods seized by constable to be delivered to bailiff

(2) Property attached by a bailiff under sections 164 to 172 and the property delivered to him under subsection 1 shall remain in the custody of the bailiff, and he shall keep it until it is disposed of according to law. R.S.O. 1960, c. 110, s. 173.

Custody of goods seized under attachment

**174.**—(1) Where a person against whom an attachment has issued, or any person on his behalf, executes and files in the court to which the attachment, or first attachment, if there are more than one, has been returned, or is returnable, a bond with good and sufficient sureties, to be approved by the judge or clerk, binding the obligors, jointly and severally, to the clerk, in double the appraised value of the property attached, with a condition that the debtor (naming him) will, whenever thereunto required by order of the judge, pay into court a sum sufficient to satisfy the claims of all creditors who may be entitled to share in the proceeds of the property or the value of the property attached, or will produce the property to satisfy the judgments, the clerk may supersede the attachment, and the property attached shall be restored.

On what terms goods attached may be restored

Sale of goods if the debtor does not appear and give security

(2) Subject to section 171, if, within one month after the property has been attached, the person against whom the attachment has issued, or some person on his behalf, does not appear and give such bond, execution may issue as soon as judgment has been recovered, and the property attached, or so much thereof as is necessary to satisfy the judgment and costs, may be sold for the satisfaction thereof, or, if the property has been previously sold as perishable, so much of the proceeds thereof as are necessary may be applied to satisfy the judgment and costs. R.S.O. 1960, c. 110, s. 174.

Proceedings against debtors where process not previously served

**175.**—(1) Where a summons has not been served before the issue of a warrant of attachment, it may be served personally or by leaving a copy at the last place of residence or business of the defendant with any grown person residing there, or by leaving the copy at such place if no grown person is there found.

Costs

(2) If it appears to the judge at the trial that the creditor who sued out an attachment had not reasonable or probable cause for taking the proceedings, the judge shall order that no costs be allowed to the creditor. R.S.O. 1960, c. 110, s. 175.

Perishable goods, how disposed of  
R.S.O. 1970, c. 2

**176.** Subject to *The Absconding Debtors Act*, where perishable property has been attached, the bailiff who has the custody thereof, it having been first appraised, may, at the request of the attaching creditor, expose and sell it at public auction to the highest bidder, giving at least eight days notice, at the office of the clerk and at two other public places in his division, of the time and place of sale, if the property attached will admit of being so long kept, otherwise he may sell it at his discretion. R.S.O. 1960, c. 110, s. 176.

Creditors may be required to indemnify the defendant

**177.**—(1) It is not compulsory upon the bailiff or constable to attach, or upon the bailiff to sell, perishable property until the attaching creditor has given a bond to the defendant, with good and sufficient sureties to the satisfaction of the bailiff, in double the amount of the appraised value of the property, conditioned that the attaching creditor will repay the value thereof, together with all costs and damages incurred in consequence of the attachment and sale, in case judgment is not obtained by him, and the bond shall be filed with the clerk.

Application of proceeds of sale

(2) The money made shall be paid over by the bailiff to the clerk, to be dealt with in the manner hereinbefore provided. R.S.O. 1960, c. 110, s. 177.

Enforcing security given under Act

**178.**—(1) A bond given in the course of any proceeding under this Act may be sued on in any small claims court of the county in which it was executed, notwithstanding that the penalty in the bond exceeds the sum of \$400. R.S.O. 1960, c. 110, s. 178 (1), *amended*.



(2) The bond shall be delivered to any person entitled to it, upon the order of the judge, to be enforced or cancelled as the case requires. R.S.O. 1960, c. 110, s. 178 (2).

Delivery of  
bond to  
party  
entitled

#### PARTNERSHIPS AND SPECIAL NAMES

**179.**—(1) In the case of a debt or demand against two or more persons, partners in trade or otherwise jointly liable, who reside in different divisions, or of whom one or more cannot be found, one or more of such persons may be sued or served with process, and judgment may be obtained and execution issued against him or them, notwithstanding that others jointly liable have been sued or served, without prejudice to the right of the person against whom execution issues to demand contribution from any other person jointly liable with him.

One or more  
of persons  
jointly liable  
may be sued

(2) Where a judgment has been obtained against one or more of several partners under subsection 1 and the judge certifies that the demand proved was a partnership transaction, the bailiff may, under the execution, seize and sell the property of the firm as well as that of any defendant who has been served.

Bailiff may  
seize  
property  
of firm on  
certificate  
of judge

(3) Two or more persons claiming or being liable as co-partners may sue or be sued in the name of the firm of which such persons were co-partners at the time the cause of action accrued.

Partners  
sued in  
name of  
firm

(4) Where partners are sued in the name of the firm, the summons may be served on one or more of them or at the principal place in Ontario of the business of the partnership or upon any person having control of the partnership business there, and, subject to subsections 6 and 7, such service shall be deemed good service upon the firm, and the affidavit of the service of the summons shall state the name of the person served.

Service on  
partners

(5) Any party may, at any time before or after judgment, apply for an order directing a statement of the names and addresses of the persons who are co-partners in any firm that is a party to the action by the firm name, to be furnished in such manner as the judge may direct.

Order to  
furnish  
names and  
addresses

(6) In the case of a partnership that to the knowledge of the plaintiff has been dissolved before action, the summons shall be served upon every person in Ontario sought to be made liable.

When  
partnership  
dissolved

(7) Where a summons is issued against a firm and is served as directed by this section, every person upon whom it is served shall be informed by notice given at the time of service whether he is served as a partner or as a person having control or management of the partnership business or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Notice of  
capacity in  
which person  
served



Attachment  
of debts  
due by firm

(8) Debts owing from a firm carrying on business in Ontario may be attached although one or more members of the firm may be resident out of Ontario, if some person having the control or management of the partnership business or a member of the firm in Ontario is served with the attaching order. R.S.O. 1960, c. 110, s. 182.

Execution  
against  
partners

**180.**—(1) Where a judgment is against a firm, execution may, subject to section 181, issue against the property of,

- (a) the partnership;
- (b) any person who has admitted in the notice of dispute or defence filed that he is a partner, or who has been adjudged a partner;
- (c) any person who has been individually served as a partner with a copy of the summons and who has not filed a notice of dispute or defence.

Leave to  
issue  
execution  
against  
other  
members

(2) If the party who has obtained a judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply for leave to do so, and the judge may give such leave if the liability is not disputed, or, if disputed, after the liability has been determined in such manner as he may direct. R.S.O. 1960, c. 110, s. 183.

Effect of  
judgment  
against firm

**181.** Except as against the property of the partnership, a judgment against a firm does not render liable, release, or otherwise affect any member thereof who was out of Ontario when the summons was issued and who has not entered a defence to the action, unless he has been made a party under section 85 or has been served in Ontario after the summons was issued. R.S.O. 1960, c. 110, s. 184.

Persons  
carrying on  
business in  
Ontario  
under  
another  
name  
R.S.O. 1970,  
c. 340

**182.**—(1) Subject to *The Partnerships Registration Act*, a person, whether or not a British subject and whether residing in or out of Ontario, carrying on business in Ontario under a name or style other than his own name may sue and be sued in such name or style.

Leave not  
required

(2) Leave is not necessary to issue the summons.

Service of  
summons

(3) The summons may be served upon the person so carrying on business if he is in Ontario, or at his place of business in Ontario, or, if there are several such places, at the place in or nearest to the county in which the cause of action arose, upon any person having the control or management of the business there, and such service is equivalent to personal service on the person so sued.

Notice of  
character in  
which person  
served

(4) The person upon whom the summons is served shall be informed by notice given at the time of service whether he is served as the person carrying on the business or as the person

having the control or management of it or in both characters, and in default of such notice he shall be deemed to be served as the person carrying on the business.

(5) A party may, at any time before or after judgment, apply for an order directing a statement of the name and address of the person who is, and of the person who at the time of the accruing of the cause of action was, carrying on business under such name or style, to be furnished in such manner as the judge may direct.

Procuring  
name and  
address of  
person  
carrying on  
business

(6) The person so sued shall enter a dispute in his own name, but all subsequent proceedings shall continue in such name or style.

Person  
served to  
appear in his  
own name

(7) A person served as the person carrying on the business may enter a defence under protest, denying that he is the person so carrying on the business, but such defence does not preclude the plaintiff from otherwise serving the person sued or from obtaining judgment in default of defence in the ordinary form by the person so sued.

Defence  
under  
protest

(8) Where a summons is served under subsection 3 on a person having the control or management of but not carrying on the business, a dispute by him is not necessary.

When person  
served is not  
carrying on  
the business

(9) A judgment or order in the action may be enforced by execution against,

Enforcement  
of judgment,  
what property  
exigible

- (a) the property of the person so sued, used or employed in or in connection with the business; and
- (b) the property in Ontario of the person so sued, if he has entered a defence in the action or has been adjudged to be the person carrying on the business or has been personally served with the summons in Ontario and has failed to enter a defence.

(10) If the person so sued has not entered a dispute or has not been personally served or has not been adjudged to be the person carrying on the business, the plaintiff may apply for leave to issue execution against the person in Ontario whom the plaintiff alleges to be the person carrying on the business, and the judge may give such leave if the liability is not disputed, or, if disputed, after the liability has been determined, in such manner as the judge may direct. R.S.O. 1960, c. 110, s. 185.

Issuing  
execution  
against  
person  
alleged  
to be carry-  
ing on the  
business

#### GENERAL

**183.**—(1) The Inspector shall,

Duties of  
Inspector

- (a) make a personal inspection of every small claims court and of the books and papers thereof;
- (b) see that the proper books are provided, that they are in good order and condition, that the proper entries and



records are made therein in a correct manner, at a suitable time and in proper form and order, and that the papers and documents are properly classified and preserved;

- (c) see that the duties of the officers of the courts are efficiently performed and that the office is at all times duly attended by the clerk;
- (d) see that lawful fees only are taxed or allowed as costs;
- (e) see that proper security is furnished and maintained on behalf of every clerk and bailiff; and
- (f) report upon all such matters to the Lieutenant Governor.

Delegation  
of authority  
by Inspector

(2) The Inspector, with the approval of the Lieutenant Governor in Council, may delegate to any clerk or officer in his office any power or duty conferred or imposed upon the Inspector under this Act, and for such purpose every such person shall have and may exercise all the powers of the Inspector. R.S.O. 1960, c. 110, s. 199.

Destruction  
of  
documents

**184.** Where books, documents or papers have been preserved in a small claims court for so long that it appears they need not be preserved any longer, the judge may make an order authorizing the Inspector to cause their destruction. R.S.O. 1960, c. 110, s. 200.

Power of  
Inspector  
in making  
inquiry into  
conduct of  
officers

**185.** Where the Inspector considers it expedient to institute an inquiry into the conduct of a clerk or bailiff, he may require him and any other person to give evidence under oath, and for that purpose he has the same power as any court has in civil cases to summon such officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents, and to give evidence. R.S.O. 1960, c. 110, s. 201.

Contempt  
of court

**186.** Every person who wilfully insults the judge or any officer of a small claims court during his sitting or attendance in court, or interrupts the proceedings of the court, or creates a disturbance in the court-room or within hearing of the court, is guilty of an offence and any bailiff or officer of the court may, by direction of the judge, take the offender into custody and bring him before the judge, and the judge may impose upon him a fine of not more than \$20, and in default of immediate payment may, by warrant under his hand and seal, commit the offender to a correctional institution in the county for a period of not more than one month, unless the fine and costs with the expense attending the commitment are sooner paid. R.S.O. 1960, c. 110, s. 202, *amended*.



**187.**—(1) Every person who interferes with a bailiff or officer or his deputy or assistant while in the execution of his duty, or makes or attempts to rescue any property seized or attached under process of the court, is guilty of an offence and liable to a penalty of not more than \$20, to be recovered by order of the court or on summary conviction before a provincial judge, and is also liable to be imprisoned, by order of the court or provincial judge, for any term of not more than three months. Resisting officers

(2) The bailiff or officer, or any peace officer, may take the offender into custody, with or without warrant, and bring him before the court or provincial judge. R.S.O. 1960, c. 110, s. 203, *amended*. Arrest of offenders

**188.** A fine imposed by a judge under this Act may be enforced by his order in like manner as a judgment. R.S.O. 1960, c. 110, s. 204. Enforcing payment of fines

**189.** A levy or distress by virtue of this Act shall not be deemed unlawful, or the person making it be deemed a trespasser, on account of any defect or want of form in any proceeding relating thereto, nor shall the person levying or distraining be deemed a trespasser from the beginning, on account of any irregularity afterwards committed by him, but the person aggrieved by the irregularity may recover full satisfaction for the special damage sustained by him. R.S.O. 1960, c. 110, s. 205. Distress not to be deemed unlawful, etc., by reason of defect in proceedings

**190.**—(1) In cases not expressly provided for by this Act or by the rules, the judge may, in his discretion, adopt and apply the general principles of practice in the Supreme Court to actions and proceedings in the small claims courts. Where practice of the Supreme Court to apply

(2) Nothing in this Act authorizes the taxation or allowance of costs to any officer of the court, other than those provided for by this Act, or in the tariff of fees. R.S.O. 1960, c. 110, s. 206. Limitations as to costs

**191.** No proceedings shall be quashed or vacated for any matter of form. R.S.O. 1960, c. 110, s. 207. Defects in form

**192.** Unless otherwise provided, every notice required by this Act shall be in writing. R.S.O. 1960, c. 110, s. 208. Notices to be in writing

**193.**—(1) Affidavits may be sworn before a clerk or deputy clerk, or before a justice of the peace, notary public or commissioner for taking affidavits. Before whom affidavits may be sworn

(2) An affidavit, sworn before the agent of the party on whose behalf it was made, or before the clerk or partner of such agent, shall not be used. R.S.O. 1960, c. 110, s. 209. Affidavits sworn before agents not to be used

**194.** Where a change in the date of a hearing or other proceeding is necessary because of failure to effect service or for Changing date in process

any other reason, the clerk may change the date or dates appearing in a summons, judgment summons, subpoena or other notice or process. R.S.O. 1960, c. 110, s. 210.

Rules and  
regulations

**195.**—(1) The Lieutenant Governor in Council may make rules and regulations,

- (a) prescribing the small claims courts that shall be maintained, the territorial limits of the divisions and the place within each division where the court office shall be located;
- (b) prescribing fees payable to the Crown and to clerks, bailiffs, appraisers, witnesses and for any other services performed under this Act;
- (c) regulating the sittings of the courts and providing for fixing the times and places of such sittings;
- (d) prescribing the duties of clerks and bailiffs and requiring clerks to furnish to judges information regarding sittings of the court;
- (e) prescribing the returns to be made and the information to be furnished by clerks and bailiffs;
- (f) prescribing forms and providing for their use;
- (g) providing for the service of summonses and other process issued out of small claims courts by prepaid mail or otherwise and prescribing the manner of proving service and such other matters as may be necessary or incidental thereto;
- (h) providing for the continuation of courts where a union of counties is dissolved or a county is separated from a union of counties and for the continuation or transfer of actions and judgments therein;
- (i) prescribing and governing the security to be furnished by clerks and bailiffs for the due performance of their duties and, in connection therewith, providing for the Inspector to enter into agreements with any company authorized to carry on the business of fidelity insurance in Ontario;
- (j) regulating any matter relating to the practice and procedure of the courts, or to the duties of the officers thereof, or to the costs of proceedings therein;
- (k) respecting every matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect the provisions of this Act and of all other Acts respecting small claims courts.

Territorial  
limits

(2) In prescribing the territorial limits of a division, the Lieutenant Governor in Council may, where in his opinion the circumstances of the case so warrant,

- (a) include any area within the territorial limits of more than one division; and
- (b) include within the territorial limits of a small claims court, an area in an adjoining county. R.S.O. 1960, c. 110, s. 211.

## PART II

### APPLICABLE ONLY TO DISTRICTS

**196.**—(1) In any of the types of action in which a small claims court is given jurisdiction by section 54, the small claims courts in the provisional judicial districts have jurisdiction where the amount claimed does not exceed \$800. Increased jurisdiction in districts

(2) In every such action in which the amount claimed exceeds \$400, the rules relating to pleadings as from time to time contained in the Rules of Practice and Procedure of the Supreme Court apply *mutatis mutandis*, and a judge may in his absolute discretion make such order or direction as to production and discovery, including costs, as he sees fit. Rules of Practice S.C.O. to apply

(3) A person, other than a barrister or solicitor, may not appear as agent for a party at the trial or hearing of an action brought under this section in which the amount claimed exceeds \$400. 1961-62, c. 35, s. 8. Counsel

**197.**—(1) An appeal lies to the Court of Appeal from a judgment under section 196. Appeal

(2) The provisions of Part I as to appeals apply to an appeal under this section. R.S.O. 1960, c. 110, s. 215. Application of Part I

(3) On the day on which section 17 of *The Judicature Act* is proclaimed in force, subsection 1 is amended by striking out "Court of Appeal" in the first line and inserting in lieu thereof "Supreme Court". 1970, c. 120, ss. 13, 15 (4). Amendment to subs. 1 R.S.O. 1970, c. 228

**198.** Upon an application for a new trial in an action wherein either party may appeal, personal service may be effected, or all papers requiring service may be delivered to the clerk of the court where the action was tried, or left at his office for the person entitled thereto, and the clerk shall forthwith send by registered mail all such papers to the person entitled to them or to his agent. R.S.O. 1960, c. 110, s. 216. Service on application for new trial

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